Nicholls State University Title IX and Power Based Violence Policy

**Responsible Administrator:** Title IX Coordinator

**Responsible Office: Nicholls Office of Title IX**

**Effective Date:**

## **Policy Statement**

Nicholls State University (“University”) is committed to fostering an environment that is safe, secure and free from sex discrimination and sexual harassment, sexual violence, dating and domestic violence, and stalking among all forms of Power-Based Violence. The University takes prompt and appropriate action to address misconduct, end a hostile environment if one has been created, and prevent the recurrence of a hostile environment. The University has several policies through which sexual harassment and sexual misconduct is addressed including [Nicholls Student Policy and Procedure Manual](https://www.nicholls.edu/student-policy/); [Nicholls’ Policy Prohibiting Workplace Discrimination, Harassment, and Retaliation](https://www.nicholls.edu/policy-procedure-manual/), and this policy. This policy covers all behavior that is protected under Title IX of the Education Amendments Act of 1972 as well as Act 472 of Louisiana State Board of Regents Uniform Policy against Power Based Violence. The University seeks to create an environment in which students and community members can report any violation of the aforementioned policies. When a report is filed with the University through any of the available reporting forms or through other reporting means such as in person or by phone, the recipient of that report will ensure that the appropriate department addresses the conduct, and the applicable parties are notified of the appropriate policy governing any administrative actions. Anonymous reports can be made through the reporting form located on the [Office of Title IX website](https://www.nicholls.edu/titleix/).

## **Reason for the Policy**

Applicable federal and state laws prohibit discrimination and harassment based on sex in the workplace and in education programs and activities and may require Nicholls to respond in particular ways to disclosures of such discrimination or harassment.

# **Applicability**

This policy covers all behavior that is protected under Title IX of the Education Amendments Act of 1972 as well as Act 472 of Louisiana State Board of Regents Uniform Policy against Power Based Violence.

This policy applies to the entire Nicholls community, including, but not limited to, students, student organizations, faculty, administrators, and staff, whether on or off campus, and third parties such as guests, visitors, volunteers, invitees, and alumni when they are on Nicholls’ campus or participating in Nicholls -sponsored activities.

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, age, race, nationality, class status, ability, religion, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness.

Alleged incidents of Prohibited Conduct under this Policy occurring on or after the original effective date of this policy will follow the protocols and procedures outlined in this Policy. Resolution of reports made under this Policy shall follow the protocols and procedure in effect at the time the report is made. However, the definitions of Prohibited Conduct in effect at the time of the incident will govern, unless otherwise directed by the Title IX Coordinator.

Obligations in this policy assigned to a particular title, such as the Title IX Coordinator, may be designated as appropriate by the University.

## **Prohibited Conduct Under this Policy**

This section includes the conduct prohibited by this Policy that can be resolved through the available processes described in this Policy.

Title IX Prohibited Conduct:

1. **Title IX Sexual Harassment** isconduct on the basis of sex that satisfies one or more of the following:
   1. Quid Pro Quo: A Nicholls employee conditions the provision of an aid, benefit, or service of the University on an individual’s participating in unwelcome sexual conduct; or
   2. Hostile Environment: Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s education program or activity; and Sexual Assault, Dating Violence, Domestic Violence, Stalking, and Retaliation, as defined below.
2. **Title IX Sexual Assault** is having or attempting to have sexual contact with another individual without consent or where the individual cannot consent because of age or temporary or permanent mental incapacity (see below for definition of consent and incapacitation). Sexual contact includes:
   1. sexual intercourse (anal, oral, or vaginal), including penetration with a body part (e.g., penis, finger, hand, or tongue) or an object, or requiring another to penetrate themselves with a body part or an object, however slight;
   2. sexual touching of the private body parts, including, but not limited to, contact with the breasts, buttocks, groin, genitals, or other intimate part of an individual’s body for the purpose of sexual gratification.
      * Sexual touching may be over or under clothing and may include the Respondent touching the Complainant, the Respondent making the Complainant touch the Respondent or another person, or the Respondent making the Complainant touch the Complainant’s own body.
3. **Title IX Dating Violence** includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; (iii) the frequency of interaction between the persons involved in the relationship.
4. **Title IX Domestic Violence** is felony or misdemeanor crimes of violence committed by a person who is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the school, or a person similarly situated to a spouse of the victim; is cohabitating or has cohabited with the victim as a spouse or intimate partner; shares a child in common with the victim; or commits actions against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.
5. **Title IX Stalking** is engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety or others, or suffer substantial emotional distress.  
     
   Course of conduct means two or more instances including but not limited to unwelcome acts in which an individual directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property. Substantial emotional distress means significant mental suffering or anguish.  
     
   Stalking includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used.

Power Based Violence Prohibited Conduct

In addition to the Prohibited Conduct described above, the Policy also prohibits conduct which does not meet the definitional or jurisdictional requirements of Title IX. The following conduct is prohibited by this Policy whether it occurs on or off-campus.

Power-based Violence is any form of interpersonal violence intended to control or intimidate another person through the assertion of power over the person, to include the following:

1. Dating violence ([R.S. 46:2151(C)](https://legis.la.gov/legis/Law.aspx?d=100568)).
2. Domestic abuse and family violence ([R.S. 46:2121.1(2](https://legis.la.gov/legis/Law.aspx?p=y&d=100545)) and [2132(3)](https://legis.la.gov/legis/Law.aspx?d=100555)). For the purpose of this Part, domestic abuse shall also include any act or threat to act that is intended to coerce, control, punish, intimidate, or exact revenge on the other party, for the purpose of preventing the victim from reporting to law enforcement or requesting medical assistance or emergency victim services, or for the purpose of depriving the victim of the means or ability to resist the abuse or escape the relationship.
3. Nonconsensual observation of another person's sexuality without the other person's consent, including voyeurism ([R.S. 14:283.1](https://www.legis.la.gov/legis/Law.aspx?d=285172#:~:text=Voyeurism%20is%20the%20viewing%2C%20observing,the%20purpose%20of%20arousing%20or)), video voyeurism ([R.S. 14:283](https://legis.la.gov/Legis/Law.aspx?d=78391)), nonconsensual disclosure of a private image ([R.S. 14:283.2](https://legis.la.gov/Legis/Law.aspx?d=78391)), and peeping tom activities ([R.S. 14:284](https://legis.la.gov/Legis/Law.aspx?d=78392)).
4. Sexual assault ([R.S. 14:41](https://legis.la.gov/Legis/Law.aspx?d=78528), [42](https://legis.la.gov/Legis/Law.aspx?d=78529) through [43.5](https://legis.la.gov/Legis/Law.aspx?d=78536), [89](https://legis.la.gov/Legis/Law.aspx?d=78695), [89.1](https://legis.la.gov/Legis/Law.aspx?d=78695), and [106](https://legis.la.gov/Legis/Law.aspx?d=78258)).
   1. Sexual Battery ([14:43.1](https://legis.la.gov/Legis/Law.aspx?d=78532))
   2. Misdemeanor sexual battery ([14:43.1.1](https://legis.la.gov/Legis/Law.aspx?d=963337))
   3. Second degree sexual battery ([14:43.2](https://legis.la.gov/Legis/Law.aspx?d=78533))
   4. Oral sexual battery ([14:43.3](https://legis.la.gov/Legis/Law.aspx?d=78534))
   5. Female genital mutilation ([14:43.4](https://legis.la.gov/Legis/Law.aspx?d=78535))
   6. Intentional exposure to HIV ([14:43.5](https://legis.la.gov/Legis/Law.aspx?d=78536))
   7. Crime against nature ([14:89](https://legis.la.gov/Legis/Law.aspx?d=78695))
   8. Aggravated Crime against nature ([14:89.1](https://legis.la.gov/Legis/Law.aspx?d=78696))
   9. Obscenity ([14:106](https://legis.la.gov/Legis/Law.aspx?d=78258))
5. Sexual exploitation means an act attempted or committed by a person for sexual gratification, financial gain, or other advancement through the abuse of another person's sexuality including prostituting another person ([R.S. 14:46.2](https://legis.la.gov/Legis/Law.aspx?d=320889) and [82](https://legis.la.gov/Legis/Law.aspx?d=78677) through [86](https://legis.la.gov/Legis/Law.aspx?d=78687)).
   1. Human trafficking ([14:46.2](https://legis.la.gov/Legis/Law.aspx?d=320889))
   2. Prostitution ([14:82](https://legis.la.gov/Legis/Law.aspx?d=78677))
   3. Prostitution of person under 18 ([14:82.1](https://legis.la.gov/Legis/Law.aspx?d=78678))
   4. Purchase of commercial sexual activity ([14:82.2](https://legis.la.gov/Legis/Law.aspx?d=919550))
   5. Solicitation for prostitutes ([14:83](https://legis.la.gov/Legis/Law.aspx?d=78679))
   6. Inciting prostitution ([14:83.1](https://legis.la.gov/Legis/Law.aspx?d=78680))
   7. Promoting prostitution ([14:83.2](https://legis.la.gov/Legis/Law.aspx?d=78681))
   8. Prostitution by massage ([14:83.3](https://legis.la.gov/Legis/Law.aspx?d=78682))
   9. Sexual massages ([14:83.4](https://legis.la.gov/Legis/Law.aspx?d=78683))
   10. Pandering (sexual) ([14:84](https://legis.la.gov/Legis/Law.aspx?d=78684))
   11. Letting premises for prostitution ([14:85](https://legis.la.gov/Legis/Law.aspx?d=78685))
   12. Enticing persons into prostitution ([14:86](https://legis.la.gov/Legis/Law.aspx?d=78687))
6. Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal, physical, or inappropriate conduct of a sexual nature when the conduct explicitly or implicitly affects an individual's employment or education, unreasonably interferes with an individual's work or educational performance, or creates an intimidating, hostile, or offensive work or educational environment and has no legitimate relationship to the subject matter of a course or academic research.
7. Stalking ([R.S. 14:40.2](https://legis.la.gov/Legis/Law.aspx?d=78515)) and cyberstalking ([R.S. 14:40.3](https://legis.la.gov/Legis/Law.aspx?d=78516))
8. Unlawful communications ([R.S. 14:285](https://legis.la.gov/Legis/Law.aspx?d=78393)).
9. Unwelcome sexual or sex- or gender-based conduct that is objectively offensive and has a discriminatory intent.
10. **Retaliation** is expressly prohibited under this Policy. Retaliation includes, but is not limited to, intimidation, harassment, threats, or other adverse action or speech against the person who: in good faith reports what they believe is power-based violence; (2) cooperates with an investigation or proceeding under this Policy; or (3) opposes conduct that they believe to violate this Policy. However, an individual who reports an incident of Prohibited Conduct or participates in an investigation or proceeding and has perpetrated or assisted in the perpetration of committing the reported Prohibited Conduct, is still subjected to an investigation for a potential violation of this policy and may be subject to disciplinary action

Anyone who believes they have been retaliated against should immediately report it to the Title IX Coordinator, who will treat it as a Report. Any individual found to have retaliated against another individual will be in violation of this Policy and will be subject to disciplinary action. Employees who are mandatory reporters (i.e., Responsible Employees) under this Policy are required to report retaliation.

**V. Definitions**

1. **Advisor**: A person chosen by a party or appointed by the Institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing.
2. **Consent**: Consent to engage in sexual activity must exist from beginning to end of each instance of sexual activity. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage in a specific sexual activity. Silence alone, without actions evidencing permission, does not demonstrate Consent. Consent must be knowing and voluntary. To give Consent, a person must be of legal age. Assent does not constitute Consent if obtained through coercion or from an individual whom the Alleged Offender knows or reasonably should know is Incapacitated. The responsibility of obtaining Consent rests with the person initiating sexual activity. Use of alcohol or drugs does not diminish one’s responsibility to obtain Consent. Consent to engage in sexual activity may be withdrawn by any person at any time. Once withdrawal of Consent has been expressed, the sexual activity must cease. Consent is automatically withdrawn by a person who is no longer capable of giving Consent. A current or previous consensual dating or sexual relationship between the parties does not itself imply Consent or preclude a finding of responsibility.
3. **Coercion:** The use of express or implied threats, intimidation, or physical force, which places an individual in fear of immediate harm or physical injury or causes a person to engage in unwelcome sexual activity. Coercion also includes administering a drug, intoxicant, or similar substance with the intent to impair that person’s ability to consent prior to engaging in sexual activity.
4. **Confidential Advisor**: A person designated by an Institution to provide emergency and ongoing support to students who are alleged victims of Prohibited Conduct.
5. **Complainant:** An individual who is alleged to be the victim of behavior that could constitute power-based violence under this policy (or an individual who is alleged to be the victim of conduct that could constitute sexual harassment under Title IX) irrespective of whether a Formal Complaint has been filed.
6. **Decision Maker**: An individual selected by Nicholls and charged with determining responsibility for an allegation of Prohibited Conduct.
7. **Deputy Coordinator:** A staff member designated by Nicholls to work with the Title IX Coordinator to provide support and assistance in compliance obligations under Title IX and additional federal and state laws, this policy, and campus processes, including conducting investigations of alleged discrimination and harassment.
8. **Employee** is:
   * An administrative officer, official, or employee of a public postsecondary education board or Institution.
   * Anyone appointed to a public postsecondary education board or Institution.
   * Anyone employed by or through a public postsecondary education board or Institution.
   * Anyone employed by a foundation or association related to a System Management Board or Institution.

The employee category does not include a student enrolled at a public postsecondary institution whose employment is contingent upon enrollment as a student, unless the student works for the Institution in a position such as a teaching assistant or residential advisor.

1. **Education Program or Activity**   
   Nicholls’ “education program or activity” includes:
   * Any on-campus facility, property, or building owned or controlled by the University;
   * Any off-campus program or activity that Nicholls has substantial control over;
   * Any off-campus premises that Nicholls has substantial control over. This includes buildings or property owned or controlled by a recognized student organization; and
   * Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of Nicholls’ programs and activities over which Nicholls has substantial control.
2. **Formal Complaint**   
   “Formal complaint” means a written document (hard copy or electronic) that alleges that a Respondent committed Prohibited Conduct under this policy and requests initiation of the procedures consistent with the Policy to investigate the allegation of the conduct. A “Formal Complaint” can only be filed by a Complainant with a signature or other indication that the complainant is the person filing the formal complaint or signed by the Title IX Coordinator.

A third party who knows of or witnessed an incident of Prohibited Conduct but who did not suffer such conduct themselves may request that Nicholls treat their third-party Report as a Formal Complaint. Nicholls can convert a Report to a Formal Complaint if it determines that, in order to meet its state and/or federal obligations to provide a safe and nondiscriminatory environment for the broader institutional community, it must take further steps to address and resolve the matter.

1. **Incapacitation:** An individual is considered to be incapacitated if, by reason of mental or physical condition, the individual is manifestly unable to make a knowing and deliberate choice to engage in sexual activity. Individuals who are asleep, unresponsive, or unconscious are incapacitated. Other indicators that an individual may be incapacitated include, but are not limited to, inability to communicate coherently, inability to dress/undress without assistance, inability to walk without assistance, slurred speech, loss of coordination, vomiting, or inability to perform other physical or cognitive tasks without assistance.
2. **Informal Resolution**: A voluntary process that is separate and distinct from an Institution’s investigation and adjudication processes that allows the parties (i.e., Complainant and Respondent) to reach a mutually agreeable resolution.
3. **Investigators**: Individuals designated by the Title IX Coordinator to conduct an investigation of alleged Prohibited Conduct. The Investigators will be a trained individuals who objectively collects and examines the facts and circumstances of potential violations of this Policy and documents them for review. The Investigators will be neutral and will not have a conflict of interest or bias against the Complainant or Respondent, or Complainants and Respondents generally.
4. **Mandatory Reporter**: An individual who is obligated by law to report any knowledge they may have of power-based violence. For purposes of this Policy, mandatory reporters include Responsible Employees. (See definition of Responsible Employee.)
5. **Party or Parties:** Referring to Complainant(s), Respondent(s), or both Complainant(s) and Respondent(s).
6. **Respondent:** An individual who has been accused in a Report or Formal Complaint of conduct that could constitute power-based violence prohibited under this Policy (or, under the Title IX Grievance policy, an individual alleged to be the perpetrator of conduct that could constitute sexual harassment under Title IX).
7. **Responsible Employee**: An employee who receives a direct statement regarding or witnesses an incident of power-based violence. Responsible Employees do not include an employee designated as a Confidential Advisor pursuant to R.S. 17:3399.15(B) or an employee who has privileged communications with a student as provided by law.
8. **Report**: (verbal or written) will become a “Formal Complaint” if a First-Party Reporter files a written and signed document with the Title IX Coordinator describing an incident of Prohibited Conduct and indicating that they want the Nicholls to take further steps, such as conducting a full investigation and possibly holding a hearing to resolve the alleged issue. Nicholls can also convert a Report to a Formal Complaint if the Institution determines that, in order to meet its Title IX obligations to provide a safe and nondiscriminatory environment for the broader institutional community, it must take further steps to address and resolve the matter. In such cases, the Complainant must be allowed to submit on paper (hard copy), in electronic form, or in person, whereby the individual can file a Formal Complaint by meeting with the Title IX Coordinator (or Deputy Coordinator) to provide a verbal description of the Prohibited Conduct which the Title IX Office will use to draft a written document that the individual will review, verify, and sign to constitute a Formal Complaint.
9. **Signature:** A physical, handwritten signature on a document, or an electronic indication that the party is electing to sign a document via validated means, including through a valid Nicholls email and ID number.
10. **Supportive Measures**: Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the Institution’s educational environment, or deter sexual harassment. Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Supportive Measures are also available to Respondents.

Any individual who has been the victim of Prohibited Conduct may request assistance in changing academic, living, transportation, and working situations, as applicable. The University will grant such modifications, provided they are reasonable and available, regardless of whether the victim chooses to report the crime to law enforcement.

1. **Title IX Prohibited Conduct** includes the following, as defined in Section IV Prohibited Conduct: Title IX Sexual Harassment, domestic violence, dating violence, and stalking, when such violations are alleged to have occurred within the Educational Program or Activity and inside of the United States.

## **VI. Policy**

### The Title IX Coordinator

The Title IX Coordinator is charged with monitoring compliance with Title IX; providing education and training; overseeing complaints; and coordinating Nicholls’ investigation, response, and resolution of all reports of Prohibited Conduct under this policy.The Title IX Coordinator is available to meet with any Student, Employee, or Third Party to discuss this policy or the accompanying procedures and can be contacted at: titleix@nicholls.edu

### Employee Reporting Obligation

An employee who receives a direct statement regarding or witnesses prohibited conduct, including but not limited to power-based violence, committed by or against a student is a Responsible Employee (unless they are designated specifically as a Confidential Advisor). A Responsible Employee shall promptly report the incident to the Institution’s Title IX Coordinator.

A Responsible Employee must report the following to the Title IX Coordinator:

* The identity of the alleged victim;
* The identity of the alleged perpetrator;
* The type of power-based violence or retaliation alleged to have been committed;
* Any other information about witnesses, location, date, and time that the incident occurred; and
* Any other relevant information.

However, according to state law a Responsible Employee is not required to make a report if information involving power-based violence was received in the following circumstances:

* During a public forum or awareness event in which an individual discloses an incident of power-based violence as part of educating others;
* Disclosure made in the course of academic work consistent with the assignment; or
* Disclosure made indirectly, such as in the course of overhearing a conversation.

If an individual chooses to make an initial report to an employee other than the Title IX Coordinator, that employee must refer the information to the Title IX Coordinator.

If an employee believes an individual may intend to share any information regarding an instance of Prohibited Conduct, the employee should seek to confirm that the reporting party understands the employee’s obligations as a mandatory reporter. If the reporting party would prefer to speak with a confidential resource, the employee should direct the reporting party to a confidential resource.

### Amnesty

An individual acting in good faith who reports or assists in the investigation of a report of an incident of Prohibited Conduct, or who testifies or otherwise participates in a disciplinary process or judicial proceeding arising from a report of such an incident may not be subjected to any disciplinary action by Nicholls in which the individual is enrolled or employed for any violation of Nicholl’s Student Policy and Procedures manual reasonably related to the incident for which suspension or expulsion from Nicholls is not a possible punishment.

Immunity shall not apply to an individual who perpetrates or assists in the perpetration of Prohibited Conduct.

Students who make reports of Prohibited Conduct under this Policy will not be sanctioned by Nicholls for nonviolent student conduct violations that would not lead to consideration of campus or residential removal, such as underage drinking, that is revealed in the course of making such a report.

### Requesting Accommodations

This policy does not alter any Nicholls obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973.

Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the grievance process. Accommodations will be granted if appropriate and that do not fundamentally alter the Process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other Nicholls programs and activities.

Requests for accommodations in connection with allegations of Prohibited Conduct should be made to the University’s Title IX Coordinator. The University will provide information about the employee’s request for accommodation only to those having a need to know such information in order to implement the accommodations.

### Effect of Criminal Proceedings

Prohibited Conduct may constitute a violation of both law and Nicholls policy. The University encourages students to report alleged power-based violence promptly to local law enforcement agencies. Criminal investigations may be useful in the gathering of relevant evidence, particularly forensic evidence. The standards for finding a violation of criminal law are different from the standards for finding a violation of this policy. Therefore, criminal investigations or reports are not determinative of whether Prohibited Conduct, for purposes of the policy, has occurred. In other words, conduct may constitute Prohibited Conduct under this policy even if law enforcement agencies lack sufficient evidence of a crime and decline to prosecute.

The filing of a complaint of Prohibited Conduct under this policy is independent of any criminal investigation or proceeding. The University will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation or take any necessary interim measures to protect the complainant and the University community. However, the University may temporarily delay its investigation to enable law enforcement to gather evidence and to engage in a preliminary investigation of misconduct matters that may also violate the state criminal code. Such delay should not last longer than ten (10) days except when law enforcement requests and justifies a longer delay.

### Complainant’s Rights

* The right to seek medical treatment and be notified of on and off campus resources and services;
* The right to contact law enforcement, decline to contact law enforcement, and/or seek a protective order;
* The right to file a Formal Complaint and the right to seek Informal Resolution after filing a Formal Complaint;
* The right to be accompanied by an advisor of choice to any related meeting or proceeding;
* The right to experience prompt proceedings and a fair, impartial investigation and resolution;
* The right to be treated with dignity, respect, and in a non-judgmental manner;
* The right to not be discouraged from reporting, nor encourage to under-report or report the incident as a lesser crime; and
* Per state law, complainants who are confirmed to be victims may submit a petition to have a perpetrator of an incident of power-based violence against the victim barred from attending a class in which the victim is enrolled.

## **Respondent’s Rights**

* The right to be presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
* The right to be accompanied by an advisor of choice to any related meeting or proceeding;
* The right to experience prompt proceedings and a fair, impartial investigation and resolution;
* The right to be treated with dignity, respect, and in a non-judgmental manner; and
* The right to be notified of on and off campus resources and services.

## **Procedures**

This section contains the procedures to report Prohibited Conduct covered under Title IX of the Education Amendments Act of 1972 as well as Act 472 of Louisiana State Board of Regents Uniform Policy against Power Based Violence. This section also contains the procedures related to options for resolution, including investigations and adjudications.

### Disclosing and/or Reporting Prohibited Conduct

This section includes information about how to make confidential disclosures, non-confidential disclosures, how to report to law enforcement and/or public safety, as well as how to report to the Title IX Coordinator.

Reporting individuals may choose any or all of these options free from retaliation, and may receive assistance and supportive measures from Nicholls regardless of which options are exercised.

#### Confidential Disclosure Options

The following officials may provide confidentiality. This means that disclosing Prohibited Conduct to these resources will not lead to an investigation. Professional, licensed counselors and pastoral counselors (ordained clergy) whose official responsibilities include providing mental health counseling to Nicholls students, including those who act in that role under the supervision of a licensed counselor, are not required to disclose any information about an incident of Prohibited Conduct to the Title IX coordinator without a victim’s permission.

State law requires professional counselors to report in instances when a patient has communicated a threat of physical violence, which is deemed to be significant in the clinical judgment of the treating psychologist or psychiatrist, or marriage and family therapist, or licensed professional counselor, or social worker, against a clearly identified victim or victims, coupled with the apparent intent and ability to carry out such threat, the psychologist, licensed under R.S. 37:2351 through 2369, the medical psychologist, licensed under R.S. 37:1360.51 through 1360.72, the psychiatrist, licensed under R.S. 37:1261 through 1291, or the social worker, credentialed under R.S. 37:2701 through 2723, treating such patient and exercising reasonable professional judgment, shall not be liable for a breach of confidentiality for warning of such threat or taking precautions to provide protection from the patient's violent behavior.

##### Confidential Resources for Students and Employees

**University Counseling Center**  
224 Elkins Hall  
[www.nicholls.edu/counseling](http://www.nicholls.edu/counseling)  
985-448-4080

**University Health Services**  
Ayo Hall, 1st Floor  
[www.nicholls.edu/health](http://www.nicholls.edu/health)  
985-493-2600

**Confidential Advisors:**

Adrienne Naquin-Bolton

985-448-4091

[Adrienne.bolton@nicholls.edu](mailto:Adrienne.bolton@nicholls.edu)

Cambria Bouzigard

985-448-4101

[Cambria.bouzigard@nicholls.edu](mailto:Cambria.bouzigard@nicholls.edu)

Dr. Chantrelle Varnado-Johnson

985-448-4349

[Chantrelle.varnado-johnson@nicholls.edu](mailto:Chantrelle.varnado-johnson@nicholls.edu)

For Employees: For access to the Employee Assistance Program, please call 888-293-6948 or contact Human Resources at [hr@nicholls.edu](mailto:hr@nicholls.edu) or 985-448-4050.

#### Non-Confidential Campus Resources

**Deputy Title IX Coordinators:**

Alison Hadaway

985-448-4041

[Alison.hadaway@nicholls.edu](mailto:Alison.hadaway@nicholls.edu)

Andrew Kearney

985-448-4812

[Andrew.kearney@nicholls.edu](mailto:Andrew.kearney@nicholls.edu)

Emily Scurto

985-448-4479

[Emily.scurto@nicholls.edu](mailto:Emily.scurto@nicholls.edu)

#### Reporting to Law Enforcement and Public Safety

**Nicholls State University Police**

**Calecas Hall**

**Non-Emergency Line:** 985.448.4746  
**Emergency Line:** 985.448.4911  
**Anonymous Tip Line:** 985.448.4480

[Online Report Form](https://www.nicholls.edu/police/anonymous-crime-report/)

#### Disclosing or Reporting to the Title IX Coordinator

The University seeks to create an environment in which students and community members can report any violation of the behavior covered under Title IX of the Education Amendments Act of 1972 as well as Act 472 of Louisiana State Board of Regents Uniform Policy against Power Based Violence. When a report is filed with the University through any of the available reporting forms or through other reporting means such as in person or by phone, the recipient of that report will ensure that the appropriate department addresses the conduct, and the applicable parties are notified of the appropriate policy governing any administrative actions. Anonymous reports can be made through the reporting form located on the [Office of Title IX website](https://www.nicholls.edu/titleix/).

Any person may disclose sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment) or power-based violence, in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s oral or written report.

A disclosure may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator. Please [click here](https://cm.maxient.com/reportingform.php?NichollsStateUniv&layout_id=4) to report any misconduct related to Title IX and power-based violence.

Upon receipt of a disclosure of Prohibited Conduct, the Title IX Coordinator or their designee will promptly contact the Complainant to discuss the availability of supportive measures, consider the Complainant’s wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint, the option to have an advisor of choice accompany them to any meeting or interview related to the Prohibited Conduct under this Policy, and explain to the Complainant the process for filing a Formal Complaint. The Title IX Coordinator will make an initial assessment of the reported information and respond to any immediate safety or well-being concerns raised by the report.

In this intake assessment, the Title IX Coordinator will conduct a preliminary assessment and:

* Inform the Complainant of the right to seek medical treatment, and explain the importance of obtaining and preserving forensic and other evidence;
* Inform the Complainant of the right to contact law enforcement, decline to contact law enforcement, and/or seek a protective order;
* Inform the Complainant about campus and community resources, including no-contact orders;
* Inform the Complainant of the right to file a Formal Complaint and the right to seek Informal Resolution after filing a Formal Complaint; ascertain the Complainant’s expressed preference for resolution (Informal Resolution, Formal Resolution, or neither); and discuss with the Complainant any concerns or barriers to participating in any investigation and resolution by Nicholls;
* Explain Nicholls’ prohibition against Retaliation and that Nicholls will take prompt action in response to any act of Retaliation;
* Assess the nature and circumstances of the report, including whether it provides the names and/or other information that personally identifies the Complainant, the Respondent, any witness, and/or any other third party with knowledge of the reported incident;
* Ascertain the ages of the Parties, and if either of the parties is a minor (under 18), and follow any applicable reporting protocols;
* Coordinate with appropriate officials regarding Clery Act reporting, if applicable;
* Ensure that the Complainant receives a written explanation of all available resources and options, and is offered the opportunity to meet and discuss the resources and options;
* Assess any threat to the safety or well-being of the Complainant or the University community. A non-exhaustive list of safety factors to be considered by Nicholls includes a Respondent’s prior history, use of a weapon, use of physical violence, age of the Complainant, and other aggravating circumstances;
* Give the potential Complainant a copy of the relevant policies;
* Explain the procedural differences based on Title IX vs power-based violence conduct;
* Instruct the potential Complainant not to destroy any potentially relevant documentation in any format.

Where the Complainant requests that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no further action be taken, the Title IX Coordinator will seek to honor the preferences of the Complainant wherever possible taking into consideration the safety factors listed above and its legal obligations. The Title IX Coordinator will determine whether the Title IX Coordinator will sign a Formal Complaint even if the Complainant declines to do so. Where the Title IX Coordinator has determined that the University must proceed with a Formal Complaint despite a Complainant’s request to the contrary, the Title IX Coordinator will make reasonable efforts to protect the privacy of the Complainant. However, Nicholls’ investigation will involve speaking with the Respondent and others who may have relevant information, in which case the Complainant’s identity may have to be disclosed. In such cases, the Title IX Coordinator will notify the Complainant that Nicholls intends to proceed with the Formal Complaint, but that the Complainant is not required to participate in the investigation or in any other actions undertaken by Nicholls In all cases, the initial report, intake assessment, and the determinations of the Title IX Coordinator will be documented and retained by Nicholls in accordance with applicable law.

1. **Bystander Reports**  
   If the University receives a report of alleged Prohibited Conduct by someone other than the alleged victim (e.g., by a friend or coworker, roommate, resident advisor) or from an anonymous source, the University’s Title IX Coordinator will promptly notify the alleged victim of the report, and inform the alleged victim of the available resources and assistance. To the extent possible, the University will respond to the report of Prohibited Conduct as if the victim had made the initial report.
2. **Reports with Employee Respondents**  
   Generally, allegations of Prohibited Conduct against an employee will be addressed by the Title IX Coordinator in partnership with the University’s Office of Human Resources. This includes student-employees when the Prohibited Conduct is alleged to have occurred in the context of their employment.
3. **Reports with Third-Party Respondents**  
   Any Respondent who is not an Nicholls student, faculty member, or staff member is generally considered a Third Party. The University’s ability to take appropriate corrective action against a Third Party may be limited, and will depend on the nature of the Third Party’s relationship, if any, to the University. The University Title IX Coordinator will determine which office(s) will address allegations against all other Third-Party Respondents.

### Available Supportive and Interim Measures

#### Supportive Measures

Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Nicholl’s educational environment, or deter sexual harassment and power-based violence. Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Supportive Measures are also available to Respondents.

Any individual who has been the victim of Prohibited Conduct may request assistance in changing academic, living, transportation, and working situations, as applicable. The University will grant such modifications, provided they are reasonable and available, regardless of whether the victim chooses to report the crime to law enforcement.

#### Interim Measures

Interim measures and/or adjustments may be made to ensure safety, prevent retaliation, and avoid an ongoing hostile environment. During the fact-finding and investigatory phase, the University will offer and implement as applicable appropriate remediation measures including, but not limited to interim suspension, housing or academic accommodations, safety escorts and/or No Contact orders to ensure the safety of the community.

A No Contact Order is a document issued by a Nicholls administrator that is designed to limit or prohibit contact or communications between the parties.

#### Emergency Removal

Nicholls retains the authority to remove a respondent from the University’s program or activity on an emergency basis, where Nicholls (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment or power-based violence justifies a removal.

If Nicholls determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal, by notifying the Title IX Coordinator in writing. The University will designate an individual, not otherwise involved in the case, to consider the challenge to the removal and determine if the emergency removal was reasonable.

#### Administrative Leave

If necessary, Nicholls retains the authority to place a non-student employee respondent on administrative leave, suspension, or other discipline during a pending complaint process under this policy, with or without pay as appropriate, consistent with Nicholls policy.

### Advisor of Choice and Participation of Advisor of Choice

Each party has the right to choose and consult with an Advisor of their choice. The Advisor may be any person, including an attorney.

Parties in this process may be accompanied by an Advisor to any meeting or related hearing to which they are required or are eligible to attend. Advisors may be present to solely advise or support the party and are prohibited from speaking directly to the investigator, the decisionmaker, other parties, or witnesses. Except where explicitly stated by this Policy, Advisors shall not participate directly in the process, with the exception that only an Advisor may conduct cross-examination during a live hearing.

Nicholls will provide the parties equal access to advisors; any restrictions on advisor participation will be applied equally.

### Confidentiality

Nicholls values the privacy of its students, employees, and other community members. Community members should be able to seek the assistance they need without fear that the information they provide will be shared more broadly.

Confidentiality refers to confidential resources who are not required to redisclose Prohibited Conduct to law enforcement or Nicholls officials without the disclosing party’s permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to privacy mean Nicholls offices and employees who cannot guarantee confidentiality, but will maintain privacy to the greatest extent possible, such that information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. Nicholls will limit the disclosure as much as practicable.

Nicholls’ offices and employees who cannot guarantee confidentiality will maintain the individual’s privacy to the greatest extent possible. Information provided to a non-confidential resource will only be relayed as necessary for the Title IX coordinator to investigate and/or seek a resolution.

Note that Nicholls will maintain as confidential any supportive measures provided to a party, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the support measures. Nicholls will keep confidential who has made a report or complaint of sex discrimination, including sexual harassment and power-based violence, as well as any respondent or witness, outside of necessary disclosures of information to comply with federal and state law, and to conduct an investigation or hearing under this Policy.

As to matters involving students, under federal privacy laws, the investigation report, statements of one party that are shared with the other party in the resolution process, and any documents prepared by Nicholls, including documents by or for the adjudicators in advance of the hearing and the hearing transcript, constitute education records which may not be disclosed outside of the proceedings, except as may be required or authorized by law. Access to materials will be provided only by a secure method and parties and advisors are not permitted to make copies of any documents shared or make use of the documents outside of the processes described in this policy. Inappropriately sharing materials provided during this process may constitute retaliation and result in disciplinary action.

### Resolution Processes

Resolution processes, including Investigations and adjudications, and Informal Resolution, are initiated with a Formal Complaint. This section describes how to file a Formal Complaint and the investigation and resolution processes available depending on the type of Prohibited Conduct alleged to have occurred. All Nicholls notices described in this policy will be sent to Parties through their Nicholls email, if applicable. It is the responsibility of Parties to maintain and regularly check their Nicholls accounts.

1. Formal Complaint
   1. How to File a Formal Complaint  
        
      To file a Formal Complaint, a Complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. The Formal Complaint should include all the information the individual believes to relevant, such as time, location, nature of the incident, names of individual involved, witnesses, and other persons affected by the incident.

Individuals seeking to file a Report are allowed to submit on paper (hard copy), in electronic form, or in person, whereby the individual can file a Formal Complaint by meeting with the Title IX Coordinator (or Deputy Coordinator) to provide a verbal description of the Prohibited Conduct which the Title IX Office will use to draft a written document that the individual will review, verify, and sign to constitute a Formal Complaint.  
  
If a complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary based on the Title IX Coordinator’s assessment. Nicholls will inform the complainant of this decision in writing, and the complainant need not participate in the process further but will receive all notices issued under this policy.   
  
A complainant who files a Formal Complaint may elect, at any time, to address the matter through the Informal Resolution process described in this Policy.

* 1. Initial Review of Formal Complaint  
       
     The Title IX Coordinator will review the Formal Complaint and determine which resolution processes are available given the type of Prohibited Conduct and the status of the Parties. For example, Informal Resolution of a complaint of Title IX Prohibited Conduct is not available when the Respondent is an employee and the Complainant is a student.   
       
     If new information requires the Title IX Coordinator to amend the determination about available resolution processes, the Title IX Coordinator will advise the Parties in writing.
  2. Consolidation  
       
     The University may consolidate Formal Complaints as appropriate, for example, if there are multiple Formal Complaints where the allegations of Prohibited Conduct arise out of the same facts or circumstances.   
       
     The University may consolidate complaints alleging Prohibited Conduct 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 Prohibited Conduct arise out of the same facts or circumstances.  
       
     Nicholls reserves the right to use this Policy to adjudicate other allegations and conduct charges as defined by policies outside of the scope of this Policy in instances when the conduct is associated with an alleged issue of Prohibited Conduct.
  3. Dismissal of a Formal Complaint  
       
     The Title IX Coordinator may dismiss a Formal Complaint brought under this Policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:
     1. A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
     2. The respondent is no longer enrolled or employed by Nicholls; or
     3. If specific circumstances prevent Nicholls from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

If the Formal Complaint is dismissed before the respondent is notified about the Formal Complaint, the respondent will not be notified about the Formal Complaint. Nicholls will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, to the Complainant. The Complainant may appeal the dismissal using the appeal process in this policy.   
  
If the Formal Complaint is dismissed after the respondent is notified about the Formal Complaint, either party may appeal the dismissal using the process in this policy. Nicholls will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties.

#### Timeframe

The timeframe for the formal resolution process begins with the filing of a Formal Complaint. The resolution process will be concluded within a reasonably prompt manner. The University will inform all parties in writing of an explanation for and need of an extension. Below are the general timeframes for the major stages of the grievance process. “Days” are business days where Nicholls is open.

* 1. Investigation Stage
     + - About 60 days for the investigation
       - 10 days to review the preliminary report and to submit any response or additional information or questions
       - 5 days to respond to new evidence provided by the other party during their review of the preliminary report
       - At least 10 days between receipt of the final investigation report by the Parties and the hearing
  2. Decision & Appeals
     + Parties receive written notice of outcome 10 days or less after the hearing takes places, if applicable
     + Appeals from the Parties are due 5 days from the notice of outcome
     + If someone appeals, Nicholls has 3 days to notify the other party in writing
     + The non-appealing party has 7 days to respond or submit their own appeal
     + The Appeals Panel will issue its decision within 10 days

Each party may request a one-time delay in the resolution process of up to five (5) days for good cause (granted or denied in the sole judgment of the Title IX Coordinator or designee) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties.

For example, a request to take a five day pause made an hour before a hearing for which multiple parties and their advisors have traveled to and prepared for shall generally not be granted, while a request for a five day pause in the middle of investigation interviews to allow a party to obtain certain documentary evidence shall generally be granted. The Title IX Coordinator shall have sole judgment to grant further pauses in the process.

#### Notice of Allegations

The Title IX Coordinator will draft and timely provide the Notice of Allegations to all Parties. The University will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview.

The Notice of Allegations will include the following:

* Notice of the allegations potentially constituting Prohibited Conduct, and sufficient details known at the time the Notice is issued, such as the identities of the Parties, if known; the conduct allegedly constituting Prohibited Conduct; and the date and location of the alleged incident, if known;
* Notice of the applicable policies and procedures;
* How to challenge participation by the Title IX Coordinator for bias or conflict of interest – which the Assistant Vice President for Student Life will resolve in their sole discretion.
* How to challenge participation by the Investigator for bias or conflict of interest – which the Title IX Coordinator will resolve in their sole discretion.
* A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
* A statement that the parties may have an advisor of their choice, who may be any person including a friend, relative, colleague, or an attorney;
* A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a Party or from any other source;
* A statement that the University prohibits knowingly making false statements or knowingly submitting false information to the University.
* A statement that retaliation is prohibited.

The University will issue an amended Notice of Allegations as needed if additional allegations are discovered during the course of the investigation. The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

Within seven business days of receiving the Notice of Allegations, the Respondent should arrange to meet with the Title IX Office. The Title IX Office will provide that same information that was given to the Complainant during the Initial Contact, including: a copy of the relevant policies; explain the Formal Complaint process and procedures; information regarding the Respondent’s rights and responsibilities; the investigation process; instruct the Respondent not to destroy any potentially relevant documentation in any format; the availability of supportive measures; discuss the preference for resolution; explain the prohibition against retaliation; and inform the Respondent that necessary details have been communicated to the University Police Department for entry into the daily crime log, if applicable.

#### 4. Notice of Meetings and Interviews

Nicholls will provide parties with written notice of the date, time, location, participants, and purpose of meetings to which they are invited, including hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

#### 5. Investigations

The University will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered Prohibited Conduct after issuing the Notice of Allegations. The investigation will typically begin with interviewing the parties, any witnesses, reviewing law enforcement documents if applicable, reviewing student or employment files, and gathering and examining other relevant documents and evidence.

Nicholls and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this policy has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from Nicholls and does not indicate responsibility.

##### Knowingly False Statements

##### Anyone who knowingly makes a false accusation of unlawful discrimination, harassment, or retaliation of any form will be subject to an investigation for a potential violation of this Policy and may be subject to disciplinary action, up to and potentially including termination for employees and expulsion for students.

A Responsible Employee who is determined by Nicholl's disciplinary procedures to have knowingly failed to make a Report or, with the intent to harm or deceive, made a Report that is knowingly false shall be terminated.

Any student who knowingly and in bad faith makes a false accusation of Prohibited or retaliation of any form will be subject to an investigation for a potential violation of this Policy and may be subject to disciplinary action.

##### Relevance in Evidence and Questions

“Relevant” evidence and questions refer to any questions and evidence that tends to make an allegation of Prohibited Conduct more or less likely to be true.

The following are not relevant:

* Evidence and questions about the complainant’s sexual predisposition or prior sexual behavior unless:
  + They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
  + They concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.
* Evidence and questions that constitute, or seek disclosure of, information protected under a legally recognized privilege.
* Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent.

All parties must submit any evidence they would like the investigator to consider prior to when the parties’ time to inspect and review evidence begins.

Nicholls cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information.

1. Inspection and Review of Evidence

At the conclusion of all interviews and fact gathering, and when the evidence has been gathered, the Investigator will provide each party the opportunity to review a draft investigation report that is a summary of the relevant evidence and includes all of the evidence gathered that is directly related to the allegation(s). This will include both inculpatory and exculpatory evidence and may include evidence that is not relied upon in making a determination. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation. Prior to the draft investigation report being provided to the parties, the Title IX Coordinator will analyze the report to ensure that the investigation was prompt, impartial, thorough, and consistent with this policy.

Given the sensitive nature of the information provided, Nicholls will facilitate this review in a secure manner. Neither the parties nor their advisors may copy, remove, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the information provided. Any student or employee who fails to abide by this may be subject to discipline. Any Advisor who fails to abide by this may be subject to discipline and/or may be excluded from further participation in the process.

The Parties have ten (10) business days after reviewing the draft report and the evidence packet to submit a response in writing to the Investigator, if they choose. Such a response may include additional comments or information, identify additional witnesses or evidence, or submit any further questions to be directed by the Investigator to other parties or witnesses. The Investigator will incorporate any response provided by the parties into the Final Investigative Report.

Upon receipt of each party’s response to the evidence reviewed, the Investigator will determine if any additional investigation is needed. If new relevant evidence is provided by either party, or gathered by the Investigator, the newly gathered evidence (including answers to clarifying questions) will be made available for review by each party. Each party will have five (5) business days in which to respond to the new evidence. Each may provide a response in writing, or orally, to the Investigator. The Investigator will incorporate any oral and/or written response provided by the parties into the Final Investigation Report.

The University will provide access to copies of the parties’ written responses to the investigator to all parties and their advisors, if any.

Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

##### Final Investigation Report

The Investigator designated by the Title IX Coordinator will create a Final Investigation Report. The Investigation Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence.

Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations – relevant evidence) will be summarized referenced in the Investigation Report. The Final Investigation Report will be provided to the parties simultaneously.

#### 6. Live Hearing Adjudication Process

In all cases involving Prohibited Conduct under this policy, including power-based violence, formal resolution includes a live hearing.All participants shall be subject to Nicholls’ Rules of Decorum. Nicholls will not threaten, coerce, intimidate or discriminate against any party in an attempt to secure a person’s participation.

1. Initiating the Hearing

Within ten (10) calendar days prior to the date of the hearing, the Title IX Coordinator will notify the parties in writing of the specific charge, the date, time, and location of the hearing, the name of the Decision-Maker, and how to challenge participation by the Decision-Maker for bias or conflict of interest – which the Title IX Coordinator will resolve in their sole discretion. Nicholls may, at the discretion of the Title IX Coordinator, postpone the hearing or determine that multiple hearing sessions are necessary for a continuance. Good causes for extension may include the unavailability of the parties, the timing of semester breaks or holidays designated by Nicholls, or other extenuating circumstances requiring more time. Any extension, including the reason for the extension, will be shared with the parties in writing. The Complainant or the Respondent may seek to postpone the hearing. Permission to postpone a hearing may be granted provided that the request to do so is based on a compelling need and communicated to the Title IX Coordinator prior to the time of the hearing.

* 1. Hearing Format

The live hearing may be conducted with all parties physically present in the same geographic location, or, at Nicholls’ discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through a video conferencing option. This technology will enable participants simultaneously to see and hear each other. At its discretion, Nicholls may delay or adjourn a hearing based on technological errors not within a party’s control.   
  
A typical hearing may include brief opening remarks by the Complainant and/or Respondent, with follow-up questions posed by the Decision-Maker, information presented by the parties or witnesses deemed relevant by the Decision-Maker, with follow-up question for the parties or witnesses by the Adjudicator and the parties’ Advisors for cross-examination, and brief concluding remarks by the Complainant and Respondent.

* 1. Attendance by and Participation of Parties

All Parties have a right to be present at the hearing. Parties may be accompanied in the hearing by an Advisor of their choice and must provide the name of their Advisor to the Title IX Coordinator at least three (3) calendar days prior to the hearing.   
  
Nicholls may still proceed with the live hearing in the absence of a party and/or witness(es) may reach a determination of responsibility in their absence. If a party does not attend the live hearing, the party’s advisor may appear and conduct cross-examination on their behalf. If neither a party nor their advisor appear at the hearing, Nicholls will provide an advisor to appear on behalf of the non-appearing party.   
  
The Decision-Maker cannot draw an inference about the determination regarding responsibility based solely on a party’s absence from the live hearing or refusal to answer cross examination or other questions.

* 1. Attendance by and Participation of Witnesses

The parties may submit to the Title IX Coordinator a list of witnesses they believe have relevant information to the outcome of the hearing. The Decision-Maker/s will review the parties’ requested witnesses and consider any other witnesses. The Decision-Maker has discretion to determine which witnesses are relevant and may decline to hear from witnesses where they conclude that the information is not necessary for the review. Witnesses will only be permitted to attend the hearing during their own testimony.

* 1. Recording & Transcripts

All proceedings will be audio recorded. A transcript of the recording will be made available to the parties for inspection and review. This will be the sole recording of the hearing; no Party, Advisor, or witness is permitted to record the hearing, or any portion of the hearing. Any unauthorized recording may result in disciplinary action.

* 1. Expectations of Decorum

The following Expectations of Decorum are to be observed in the hearing, during cross-examination questioning, and as applicable to any meetings associated with resolution of a Formal Complaint; and applied equally to all parties and Advisors. The Title IX Coordinator will have the authority to remove from the meeting, process, or hearing an involved party and/or Advisors who do not comply with the Expectations of Decorum.

* Questions must be conveyed in a neutral tone.
* Parties and Advisors will refer to other parties, witnesses, Advisors, and Nicholls staff using the name and gender used by the person and shall not intentionally mis-name or mis-gender that person in communication or questioning.
* No party may act abusively or disrespectfully during the hearing toward any other party or to witnesses, Advisors, or Adjudicators.
* While an Advisor may be an attorney, no duty of zealous advocacy should be inferred or enforced within this forum.
* The Advisor may not yell, badger, or physically “lean in” to a party or witness’ personal space. Advisors may not approach the other party or witnesses without obtaining permission from the Adjudicator.
* The Advisor may not use profanity or make irrelevant ad hominem attacks upon a party or witness. Questions are meant to be interrogative statements used to test knowledge or understand a fact, they may not include accusations within the text of the question.
* The parties may not ask repetitive questions. This includes questions that have already been asked by the Adjudicator, the Advisor in cross-examination, or the party or Advisor in direct testimony. When the Adjudicator determines a question has been “asked and answered” or is otherwise not relevant, the parties must move on.
* Parties and Advisors may take no action at the hearing that a reasonable person in the shows of the affected party would see as intended to intimidate that person (whether party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.  
  1. Newly-Discovered Evidence

As a general rule, no new evidence or witnesses may be submitted during the live hearing.   
  
If a party identifies new evidence or witnesses that were not reasonably available during the investigation and could affect the outcome of the matter, the party may request that such evidence or witnesses be considered at the live hearing.   
  
The Decision-Maker/s will consider this request and make a determination regarding:

* whether such evidence or witness testimony was unavailable by reasonable effort prior to the hearing, and
* whether such evidence or witness testimony could affect the outcome of the matter. The party offering the newly-discovered evidence or witness has the burden of establishing these questions by the preponderance of the evidence.

If the Decision-Maker/s answers in the affirmative to both questions, then the parties will be granted a reasonable pause in the hearing to review the evidence or prepare for questioning of the witness. Informally, should the newly-discovered evidence require additional fact-gathering, the Decision-Maker/s may send the case back to the investigator for any further investigation as may be required. In this case, the investigator will issue an amended Investigation Report, to which the Parties shall have an opportunity to respond. Depending on the amount of new evidence, the University may shorten the second review and response period, as determined by the Title IX Coordinator. The amended Investigation Report, along with any response(s), shall then be provided to the Parties, their Advisor, and to the Decision-Maker/s.

* 1. Hearing Advisors

As per this policy, in the event that a party does not have an Advisor present at the live hearing, the University must provide an Advisor, without fee or charge to that party, who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party. At the hearing, the Adjudicator will permit each party’s Advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party’s Advisor of choice and never by a party personally. Advisors provided by the University will be adults with an understanding of the purpose of cross-examination, and may be attorneys or have training commensurate to attorneys with respect to conducting cross-examination.

1. The Decision-Maker

At Nicholls’ discretion, the Decision-Maker will be a single adjudicator or a hearing panel of three (3) individuals, with one panel member serving as chairperson. The Decision-Maker will not be the case Title IX Coordinator, Title IX Investigator, or advisor to any party in the case, nor may any Decision-Maker serve on the appeals body in the case.   
  
The Decision-Maker determines responsibility regarding whether the policy was violated, and determines which sanctions will apply if any. Where a student is found responsible for a violation of this Policy, the Title IX Coordinator will designate an appropriate administrator from the University to provide a record of disciplinary history to the Decision-Maker. The Decision-Maker will then determine the appropriate sanction(s).  
  
The Decision-Maker may not have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.

j. Cross-Examination

Before any cross-examination question is answered, the Decision-Maker/s will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by the Decision-Maker may be deemed irrelevant if they have been asked and answered.   
  
Should a party or the party’s advisor choose not to cross-examine a party or witness, the party shall affirmatively waive cross-examination through a written or oral statement to the Decision-Maker/s.   
  
The Decision-Maker shall have the authority to determine whether questions shall be submitted in writing (whether by using a “chat” feature of the video-conferencing platform, email, or a similar mechanism), prior to being asked, so as to facilitate the Decision-Maker’s ability to understand the question before making any determination of relevance.

k. Standard of Proof

Nicholls uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of Formal Complaints covered under this policy. This means that the investigation and hearing determine whether it is more likely than not that a violation of this policy occurred.

l. Impact Statement

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, aligned with Nicholls’ use of a progressive discipline system. This information is only considered at the sanction stage of the process, and is not shared until then. The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-Maker(s) at the sanction stage of the process (if the process progresses to sanctioning) after a determination of responsibility is reached.

m. Notice of Outcome

The notice of outcome is a written determination regarding responsibility that will be issued simultaneously to all parties. If there are no extenuating circumstances, the determination regarding responsibility will be issued by Nicholls within ten (10) business days of the completion of the hearing.  
  
The notice of outcome will include:

* + Identification of the allegations potentially constituting covered sexual harassment;
  + A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  + Findings of fact supporting the determination;
  + Conclusions regarding which section of this policy or other Nicholls policy, if any, the respondent has or has not violated.
  + For each allegation:
    1. A statement of, and rationale for, a determination regarding responsibility;
    2. A statement of, and rationale for, any disciplinary sanctions the recipient imposed on the respondent; and
    3. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to Nicholls’ education program or activity will be provided by Complainant, except that the remedies provided shall not be shared with the Respondent; and
  + Nicholls’ procedures and the permitted reasons for the complainant and respondent to appeal.
  + How to challenge participation by the Appeal Panel for bias or conflict of interest – which the Title IX Coordinator will resolve in their sole discretion.

If the Parties do not file an appeal, the determination is final at the expiration of the time to file an appeal. If any of the Parties file an appeal, the determination regarding responsibility becomes final on the date that the University provides the Parties with the appeal determination.

1. Range of Student Sanctions
   * Warning
   * Educational programs
   * Disciplinary probation
   * Withholding course credit (for non-degree students)
   * Withholding honors or awards
   * No contact order
   * Revocation or withdrawal of diploma or degree previously credited, awarded, or conferred
   * Separation from a University residence hall for a specific period of time or indefinitely
   * Denial or deferral of graduation, diploma, or degree
   * Deferred suspension from the University or a program of the University
   * Suspension
   * Expulsion
   * Limitations on ability to participate in University programs or activities
2. Employee Sanctions
   * Counseling or other forms of corrective action
   * Educational programs
   * No contact order
   * Demotion
   * Administrative leave of absence (without pay)
   * Suspension
   * Termination

n. Appeals

Each party may appeal (1) the dismissal of a Formal Complaint or any included allegations and/or (2) a determination regarding responsibility. To appeal, a party must submit their written appeal within five (5) business days of being notified of the decision, indicating the grounds for the appeal. The notice of outcome will include instructions on how to submit the written appeal.   
  
The limited grounds for appeal available are as follows:

* + Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow the University’s own procedures);
  + New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
  + The Title IX Coordinator, Investigator(s), or Decision-Maker, including a hearing panel member, had an actual conflict of interest or demonstrated bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter;
  + The decision reached was not supported by a preponderance of evidence;
  + The sanction is objectively unreasonable in light of the facts and circumstances.

When an appeal is submitted, any sanction is placed on hold until the appeal is resolved. Interim Measures remain in effect and Supportive Measures remain available while the appeal is pending.   
  
If a party appeals, the other party will be notified, in writing, and will then have seven (7) business days to respond to the appeal or submit their own appeal, if they wish. The appeals process is documentary only, and no hearing is held.   
  
Appeals will be decided by an appeals panel, appointed by the Title IX Coordinator, who will be free of an actual conflict of interest and/or demonstrated bias, and who have not served as investigator, Title IX Coordinator, or Decision-Maker in the same matter.   
  
The outcome of the appeal, including the rationale for the decision, will be provided in writing simultaneously to both parties ten (10) business days from the date submissions were due from the parties.

o. Transcript Notation

Nicholls will either: (1) withhold the transcript of the Respondent; or (2) place a notation on the student’s transcript for any Respondent under this policy who seeks to transfer. Nicholls will notify the Respondent that their transcript has been withheld or notated, and of the appeals process to have the hold or notation removed. Either the transcript is withheld or the notation remains on the Respondent’s transcript until Nicholls makes a determination that the Respondent is not responsible for Prohibited Conduct or the Respondent prevails in a request to appeal the withholding of a transcript or notation.

If Nicholls chooses to withhold upon the filing of a Formal Complaint, Nicholls shall place an administrative hold on the transcript of the Respondent. For any student who is the subject of a power-based violence Formal Complaint that also constitutes sexual harassment under Title IX, the Institution should commence an investigation and place a notation on the student’s transcript, rather than withholding the transcript.

If Nicholls chooses to notate upon the filing of a Formal Complaint, Nicholls may place a notation on the transcript of the Respondent. For any Respondent who is the subject of a power-based violence Formal Complaint that also constitutes sexual harassment under Title IX, the Nicholls will commence an investigation and place a notation on the student’s transcript, rather than withholding the transcript.

* For a Respondent who is the subject of a pending investigation, the notation on the transcript shall read: “ADMINISTRATIVE MATTER PENDING”
* For a Respondent for whom a final decision has been rendered, and the Respondent been found to be responsible for power-based violence, the notation on the transcript shall read: “STUDENT FOUND RESPONSIBLE IN VIOLATION OF CODE OF CONDUCT”

If the Respondent is not found responsible, the Nicholls must remove the notation and must send an updated version of the Respondent’s transcript to the Receiving Institution (if known).

Transcript Withold and Notation Appeals

A student whose transcript has been withheld or notated as described above may request a release of the hold or an expungement of the notation for good cause shown. Cause may include, but is not limited to, when (1) a student who transferred while under investigation was found not responsible or (2) a student was initially found responsible and later evidence showed that the student was in fact not responsible. In the second instance, Nicholls must send an updated version of the student’s transcript.

Such requests shall be submitted in writing to the appropriate decision makers, to be designated by Nicholls. Nicholls shall notify the requesting student of its decision no later than seven (7) business days from the date that the appeal request is made.

#### 7. Informal Resolution

##### a. Background

Informal resolution is a voluntary, remedies-based, non-judicial process, structured interaction between or among affected parties that balances support and accountability Informal resolution is designed to eliminate the Prohibited Conduct, prevent its recurrence, and remedy its effects in a manner that meets the needs of the complainant while maintaining the safety of the campus community. Informal resolution may not be used in cases where an employee is alleged to have committed Title IX Sexual Harassment against a student. Informal Resolution will not be used to impose disciplinary action against the Respondent and will not be reported to third parties; however, it may be taken into consideration in the event of future findings of responsibility for Prohibited Conduct or other violations of Nicholls’ policies. Parties interacting face-to-face is not necessary for an Informal Resolution.

##### b. Availability of Informal Resolution Process

The Parties may elect to enter Nicholls’ Informal resolution process at any time after the filing of the Formal Complaint by making a written request to the Title IX Coordinator.

Informal Resolution is not available to resolve a student Complainant’s allegation that an employee has engaged in Title IX Prohibited Conduct.

Use of the Informal resolution process is voluntary, and both the Complainant, Respondent, and Title IX Coordinator must agree to use of the Informal Resolution process. No Party may be required to participate in Informal resolution, and Nicholls will not condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to Informal resolution.

At any time after the commencement of the Informal resolution process, the Title IX Coordinator or designee may determine that the Informal resolution process is not an appropriate method for resolving the matter, and may require that the matter be resolved through the formal process.

Factors that the Title IX Coordinator or designee may weigh in considering the appropriateness of the Informal resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or safety to the campus, whether the respondent is a repeat offender, and whether the Parties are participating in good faith. The Title IX Coordinator’s determination on whether Informal Resolution is appropriate is not subject to appeal.

##### c. Exiting the Informal Resolution Process

Either Party, or the Title IX Coordinator, may end the Informal Resolution Process, at which time the investigation and/or adjudication will return to the formal process. Information disclosed or obtained for purposes of the Informal resolution process may be incorporated into the formal investigation and live hearing, if applicable, provided that this information is disclosed and reviewed by the Parties under the investigatory and hearing procedures described in the resolution process.

##### d. Required Written Notice

If a party requests the initiation of an Informal resolution process and the Title IX Coordinator agrees that the matter is appropriate for Informal resolution, each party will receive a written notice that discloses:

* The allegations;
* The requirements of the Informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;
* The parties’ right to withdraw from Informal resolution and resume or initiate disciplinary resolution with respect to the formal complaint; and
* Information about maintenance of records or how records could be shared.

##### e. Available Restorative Approaches

With approval from the Title IX Coordinator, after consultation and intake with the Informal resolution coordinator, the complainant and the respondent may voluntarily agree on the process(es) that best meets the interests and needs of the parties, including:

Facilitated Dialogue: A structured and facilitated conversation between two or more individuals, most often the complainant, the respondent, and/or other community members. The focus is often on providing a space for voices to be heard and perspectives to be shared. Depending on stated interests, the participants may sometimes work towards the development of a shared agreement, although working towards an agreement is not always the intended outcome.

Restorative Circle or Conference Process: A facilitated interaction where the individuals who have experienced harm can come together with an individual(s) who assumes responsibility for repairing the harm (to the extent possible). A circle or conference may include multiple members of the community to explore individual and community impact, harm, obligations, and opportunity for repairing them. Parties must agree on all those who will be present.

Shuttle Negotiation: An indirect, facilitated conversation (either verbally, or through written communications) individually with the complainant, the respondent, and/or other participants to discuss experience and perspective and explore interests while working towards meeting expressed needs. This negotiated process does not require direct interaction between the parties or the parties and other participants, but rather, independently, with a coordinator.

##### f. Role of the Facilitator

Informal resolution processes are managed by facilitators, who may not have a conflict of interest or bias in favor of or against complainants or respondents generally or regarding the specific Parties in the matter. The Title IX Coordinator may serve as the facilitator, subject to these restrictions.

All facilitators must have training in the definition of sexual harassment under the applicable Title IX regulations and the definitions under power-based violence, the scope of Nicholl’s education program or activity, how to conduct Informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, or bias.

##### g. Written Informal Resolution Terms

The terms of the Informal Resolution will be in writing. Once the Parties, and the Title IX Coordinator, have agreed, in writing, to the terms of the Informal Resolution, the agreement is considered final, and is not subject to withdrawal or appeal. Both Parties are equally bound to follow the terms of the Informal Resolution agreement.

##### h. Outcomes of Informal Resolutions

Measures that may be agreed to as a result of the Informal resolution process may include:

* Alcohol education classes for the respondent;
* Regular meetings for a Respondent with an appropriate Nicholls individual, unit, or resource;
* Permanent extension of a (one-way, or mutual) no contact directive;
* Restriction from participation in specific clubs and/or organizations;
* Respondent restriction from participation in particular events;
* Respondent completion of an educational plan with regular meetings with the applicable resolution coordinator or other appropriate Nicholls staff or faculty member.

##### Confidentiality

In entering the Informal resolution process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the Informal resolution process concerning the allegations of the Formal Complaint is confidential while the parties are participating in the Informal resolution process. No evidence concerning the allegations obtained within the Informal resolution process may be disseminated to any person, provided that any Party to the Informal resolution process may generally discuss the allegations under investigation with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization.

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## **Internal and External Inquiry Resources**

Inquiries about Nicholls’ application of Title IX and its implementing regulations, Title VII of the Civil Rights Act of 1964, the Clery Act, as amended by VAWA, and, in Louisiana, the Louisiana Board of Regents, under this policy may be addressed to Nicholls’ Title IX Coordinator. Inquiries concerning the Clery Act or VAWA may also be referred to the United States Department of Education, Clery Act Compliance Division. Inquiries concerning the application of Title IX and its implementing regulations may be referred to the United States Department of Education, Assistant Secretary, Office for Civil Rights, at OCR@ed.gov or (800) 421-3481.

## **Revisions to this Policy**

Nicholls has the right to revise this Policy at any time. Any new or revised Policy shall be deemed to be in effect upon being published on the University’s Office of Title IX and Nondiscrimination website. Any matters already under way shall continue under the procedures in effect as of the date of the written Notice of Allegations, unless the Parties are otherwise provided written notice that a different policy or procedure shall apply.