
Nicolet College

Student Code of Conduct

2017 - 2018

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JURISDICTION OVER STUDENT CONDUCT

Students at Nicolet College are annually provided access to and, upon request, given a copy of the Student Code of Conduct. Students are responsible for reading and agreeing to abide by the provisions of the Student Code of Conduct and the authority of the student conduct process. The Student Code of Conduct and the student conduct process apply to the conduct of individual students and College-affiliated student organizations. Said conduct will be measured against the preponderance of the evidence standard to determine if a violation of the Student Code of Conduct has occurred.

Because the Student Code of Conduct is based on shared values, it establishes a set of expectations for the Nicolet College student, no matter where or when their conduct may take place (e.g. Study Abroad). Therefore, the Student Code of Conduct will apply to behaviors that take place on campus, at College-sponsored events, and may also apply off-campus, when the College determines that the off-campus conduct affects a substantial College interest. A substantial College interest is defined to include:

- A. Incidents that constitute a criminal offense as defined by Wisconsin State law. This includes first time and repeat violations of any local, state, or federal law.
- B. Incidents where it appears the student may present a danger or threat to the health or safety of his/her self or others.
- C. Incidents that significantly infringe upon the rights, property of self or others or significantly breach the peace and/or causes social disruption.
- D. Any situation that is harmful to the educational interests of the College.

The Student Code of Conduct may be applied to conduct that takes place during the time a person is enrolled as a student, including all College breaks and between semesters. Further, the Student Code of Conduct applies to guests of community members; hosts may be held accountable for the misconduct of their guests. Visitors to and guests of Nicolet College are also protected by the Student Code of Conduct and may initiate grievances for violations of the Student Code of Conduct committed by members of the Nicolet College community against them.

Nicolet College may also extend its jurisdiction to misconduct that occurs prior to, but is not reported until after, the graduation of the offending student. Any such misconduct will not subject the violator to normal conduct proceedings but will subject him or her to special proceedings for the revocation of a degree.

EXPLANATION OF POLICIES AND DEFINITIONS

This code and College policies are provided to give students general notice of conduct expectations. This code and College policies should be read broadly and are not intended to define misconduct in comprehensive terms.

INHERENT AUTHORITY

Communications from the College to the students, and students are expected to respond without delay to requests, directions, and directives from College officials acting in the performance of their duties. Sanctions for failure to comply may be implemented where necessary to secure cooperation.

COMPLAINTS / REPORTING / CONFIDENTIALITY

Any person may file a conduct complaint/report with Nicolet College, orally or in writing about a student, student group, and/or organization suspected of violating this code or College policy. Person making such complaints will normally be expected to appear for a hearing as the Complainant. The College may stand in lieu of the reporting party as the Complainant at the election of the reporting party, who may still need to share information as a witness.

- A. **Filing of complaints:** Any member of the College community, including guests and visitors, may file a complaint against a student alleging a violation of the Student Code of Conduct. At the request of any guest, visitor, student, faculty, or staff member, or acting independently, the College may file a complaint against any student according to the standards established by the Student Code of Conduct alleging a violation of the Code.
- B. **Reports can be made in two different ways:**
 - 1. **Confidential:** This report is used solely for tracking statistics and information about the incident. No formal action will be taken against the suspect, and the complainants name will remain anonymous. Cases in which multiple reports are filed regarding a certain individual, the College may move forward as the “Complainant” with or without a cooperating witness.
 - 2. **Non-Confidential:** This is a full report that will be used by the College to investigate the complaint that has been filed and, if appropriate, pursue charges.
- C. **Consolidation:** Where more than one student is accused of violations arising out of a single occurrence or out of connected multiple occurrences, a single hearing may be held for all the students accused. Students may request that their complaint be consolidated with others or separated from others. The College will make determinations regarding consolidation; however, the separation of one or more complaints from a group of complaints will not be considered to affect the remaining complaints in the group.
- D. **Confidentiality:** Cases involving discrimination and especially sexual harassment are particularly sensitive and demand special attention to issues of confidentiality.

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Dissemination of information relating to the case should be limited to individuals who have a legitimate need to know or who have information relevant to the investigation in order that the privacy of all individuals involved is safeguarded to the extent practicable under the circumstances.

Every effort should be made to protect members of the College community so that they may report incidents, especially incidents involving acts of discrimination and sexual harassment, without fear of reprisal or retaliatory action. Confidentiality will be respected insofar as it does not interfere with the College's obligation to investigate allegations of misconduct and to take corrective action where appropriate. The College will honor the right to report instances where a student has been harmed or is incapacitated. College employees and students are obligated to comply with requests to provide statements during an investigation.

APPLICABILITY OF CODE/FOCUS OF INVESTIGATION

- A. This code does not apply to any admission decision or any decisions made by the College for academic reasons. The College prohibits all forms of academic dishonesty, but such violations are under the jurisdiction of the Vice President of Academic Affairs.
- B. The focus of the investigation in student conduct proceedings is to determine whether students accused of violating this code or College policy are "responsible" or "not responsible" as alleged and to assign any applicable sanctions. Deviations from prescribed procedures (including time deadlines) will not invalidate a decision or proceeding unless significant prejudice to a student or the College would result.
- C. Should a student withdraw from the College with a pending conduct complaint, it is the typical practice of the College to pursue investigation and resolution of the campus complaint, regardless of the fact that the student has withdrawn. If the student is found responsible for violation of the Student Code of Conduct, a hold will be placed on the student, restricting the ability of the student to re-enroll until all sanctions have been satisfied.

VIOLATIONS OF LAW

Allegations of violations of federal, state, and local laws are incorporated as offenses under the Student Code of Conduct. Any offence for which the College has jurisdiction, the College conduct process will usually go forward notwithstanding any criminal charges that may arise from the same incident. College proceedings will not be subject to challenge because criminal charges involving the same incident have been dismissed or reduced.

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When a student is accused, arrested, charged, or indicted for a crime committed off-campus, the College may elect to take action for violations of the Student Code of Conduct, which incorporates violation of local, state, or federal laws as code infractions.

When criminal charges are pending for any felony and/or misdemeanor, the College may be delayed or prevented from conducting its own investigation and from moving forward with a conduct hearing. In such cases, the College may choose to delay its hearing until it can conduct an internal investigation or obtain from law enforcement sufficient information upon which to proceed. In cases that fall within the protections of Title IX as sex or gender discrimination, delays can be granted but for no longer than 10-14 days to allow for law enforcement evidence gathering. The College process cannot be delayed beyond the above timeframe unless all parties agree because the evidence gathering phase by law enforcement extends beyond the timeframe identified above.

Nicolet College may pursue enforcement of its own rules whether or not legal proceedings are underway or in prospect and may use information from law enforcement agencies, news agencies, and the court to assist in determining whether College rules have been violated.

CONDUCT EXPECTATIONS

The Nicolet College community is committed to fostering a campus environment that is conducive to academic success, a meaningful campus life, and thoughtful study and dialogue. A community exists based on shared philosophies and respectful interaction. Student members of the community are expected to uphold and abide by certain policies, rules, and standards of conduct that form the basis of the Student Code of Conduct. When students of the community fail to demonstrate these standards, campus conduct proceedings are used to assert and uphold the Student Code of Conduct.

Abuse of College Technology: Misuse of College computing facilities, equipment, network, passwords, accounts, or information. Students who connect their personal computers (or other technologies) to the campus network will be held responsible for any violation of this policy that originates from that device. Examples of misuse include:

- A. Access, use, inspection, or modification of data or functions that are neither allotted nor authorized as a part of the user's account nor specified as public domain information;
- B. Access, use, inspection, or modification of data that refer to computer utilization, computer access authorization, or security;
- C. Abuse or improper use of hardware;
- D. Installing or executing unauthorized or unlicensed software on any College owned or operated computer resource;
- E. Causing disrupting noise, displaying abusive behavior toward other users, or creating other disturbances in any campus computing area;
- F. Sending, displaying, printing, or storing obscene, pornographic, fraudulent, harassing, threatening, racist, or discriminatory images, files, or messages through the College's network;
- G. Access and/or use of another user's account and the data contained in that account;
- H. Theft, destruction, or removal of data or College-owned computer resources;
- I. Unauthorized copying, installation, and/or distributing electronic media by any means;
- J. Physical or electronic interference with other computer systems users;
- K. Dissemination or distribution of a user account password to any other person;
- L. Use of computing facilities to interfere with the work of another student, faculty member, College official, or the normal operations of the College computing system;
- M. Any other practice or user activity that constitutes irresponsible behavior, promotes illegal activities, results in the misuse of computer resources, or jeopardized the operation of computer or network systems.
- N. Access, use, inspection, or modification of data or functions that are neither allotted nor authorized as a part of the user's account nor specified as public domain information;
- O. Access, use, inspection, or modification of data that refer to computer utilization, computer access authorization, or security;
- P. Abuse or improper use of hardware;
- Q. Installing or executing unauthorized or unlicensed software on any College owned or operated computer resource;

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- R. Causing disrupting noise, displaying abusive behavior toward other users, or creating other disturbances in any campus computing area;
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- U. Theft, destruction, or removal of data or College-owned computer resources;
- V. Unauthorized copying, installation, and/or distributing electronic media by any means;
- W. Physical or electronic interference with other computer systems users;
- X. Dissemination or distribution of a user account password to any other person;
- Y. Use of computing facilities to interfere with the work of another student, faculty member, College official, or the normal operations of the College computing system;
- Z. Any other practice or user activity that constitutes irresponsible behavior, promotes illegal activities, results in the misuse of computer resources, or jeopardized the operation of computer or network systems.

Academic Misconduct: Academic misconduct includes, but is not limited to, an act in which a student seeks to claim credit for the work or efforts of another without authorization or citation. Uses unauthorized materials or fabricated data in any academic exercise. Forges falsifies academic documents or records. Intentionally impedes or damages the academic work of others. Cheats on examinations, including the unauthorized use of materials or aids, or use of unauthorized additional time. Violates course rules as contained in the course syllabus or other information provided to the student. Violates program policies and/or regulations established by a program and made available to students.

Aiding and Abetting: Action or inaction by someone in complicity with an offender, which encourages or fails to discourage a known and obvious violation of College policy or local, state, or federal law.

Alcohol Use/Abuse: Use, possession, or distribution of alcoholic beverages, except as expressly permitted by law and the College's Alcohol Policy. This includes the consumption by those under the age of 21, providing alcohol to those under the age of 21, possession of a common source container (empty or full) and/or participating in "drinking games" that aid in the mass consumption of alcohol, driving under the influence, and public intoxication by persons of any age.

Animals/Pets: Unauthorized possession of unapproved pets, creatures, or animals within College owned or operated buildings or at College sponsored activities.

Destruction of Property: Intentional reckless, negligent, and/or unauthorized destruction or damage to College property or to the property of another.

Disorderly Conduct: Conduct which motivates and/or is intended to provoke lawless action while on campus or at functions sponsored by or participated in by the College. Conduct which is disorderly, indecent, or lewd while on campus or at functions sponsored by or participated in by the College. Failure to comply with the directions of a College official, law enforcement officers, and emergency personnel during the performance of their duties and/or failure to identify oneself to these persons when requested to do so.

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Disruption of College Operations: Obstruction of teaching, research, administration, safety and security, College activities, or other authorized activities which occur on campus (e.g. conferences, guest speakers, and meetings). Failure to comply with the directions of a College official.

Drug Use/Abuse: Under the influence and/or use, possession, in the presence of, or distribution of narcotic, other controlled substances, or the use of general products as intoxicants, as well as drug paraphernalia. Abuse and/or misuse of prescription or over-the-counter medication; allowing someone else to abuse and/or misuse your prescriptions, including “distribution” by allowing someone else access to your prescription, whether or not they have a prescription for the medication themselves.

Fire Safety: Violation of state, local, or campus fire policies, failure to evacuate a College-owned or managed building during a fire alarm, tampering, improper use, misuse, or abuse of College fire safety equipment, unwarranted dispatch of “first responder” and/or fire emergency services, tampering with or improperly engaging a fire alarm in a College building, intentionally, recklessly and/or negligently causing a fire which damages College or personal property or which causes injury to any member of the community, intentionally causing or ignoring any condition which creates a substantial fire/safety risk upon college properties.

Furnishing False Information: Knowingly furnishing or possessing false, falsified, or forged information such as falsification or misuse of documents, accounts, records, identification, verbal, written, or otherwise communicated statements or financial implements. Misuse or unauthorized use of College or College-affiliated organizational names, images, and logos.

Incident of Bias: Discriminatory harassment, intimidation, and bias-related incidents.

Obstruction of Freedom of Movement: Obstruction of freedom of movement by community members of visitors.

Published Policies: Violations of other published College rules or policies not represented in this Code.

Sexual Misconduct: Including Sexual harassment, sexual assault, non-consensual sexual contact, sexual exploitation, and rape.

Stalking: Defined as intentionally or knowingly engaging in a course of conduct directed at or concerning a specific person that would cause a reasonable person to suffer serious inconvenience or emotional distress, to fear bodily injury or to fear bodily injury to a close relation, to fear death or to fear death of a close relation, to fear damage or destruction to or tampering with property, or to fear injury to or the death of an animal owned by or in the possession and control of that specific person.

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Student Conduct Process Violation: Failure to attend meetings scheduled for student conduct administration purposes. Falsification, distortion, or misrepresentation of information. Failure to provide, destroying, or hiding information during an investigation. Discouraging an individual's proper participation in or use of the student conduct system. Harassment (verbal or physical) and/or intimidation of a member of a student conduct body prior to, during, and/or after a student conduct proceeding. Failure to comply with the sanction(s) imposed by the student conduct system. Influencing or attempting to influence another person to commit an abuse of the student conduct system. Knowingly or negligently violating the terms of any student conduct sanction imposed in accordance with this code. Retaliation against any witness or reporting individuals. Failing to respect the rights of privacy of any member of the College community (e.g. student conduct hearings and records, and other protected student records).

Theft: Knowingly taking possession of stolen property. Intentional theft or unauthorized taking of College property or the property of another.

Tobacco Use: The use of tobacco and/or the use of products designed to simulate the use of tobacco, excluding those products that have not been designated as an approved tobacco cessation product by a recognized governing body or organization possessing the authority to approve said products for cessation purposes.

Unauthorized Access: Unauthorized possession, duplication, or use of means of access (keys, I.D. cards, permits, etc.) to any College building or service. Misuse of access privileges to College premises or unauthorized entry to or use of buildings or grounds.

Violation of Law: Actions which violate local, state, or federal laws.

Violence: Threatening or causing physical harm, actions determined to be of a retaliatory nature, extreme verbal abuse, hazing, or other conduct which threatens or endangers the health or safety of any person.

Weapons Violation: Unlawful possession of firearms, explosives, other weapons, or dangerous chemicals on campus.

POSSIBLE SANCTIONS

One or more of the following sanctions may be imposed for violations of this code or College policy:

- A. **DEGREE REVOCATION:** Students who are expelled post-graduation are subject to having their degree revoked. They lose the right to claim graduation from Nicolet College or to hold themselves out as graduates. Notations will be indicated on their transcript accordingly. Students who are suspended post-graduation are subject to having their diploma and/or degree withheld until the suspension is complete. These proceedings will only be convened if the offense alleged would have subjected the violator to suspension or expulsion if reported prior to graduation.
- B. **EXPULSION:** Permanent separation of the student from the College. A notation will appear on the student's transcript. Expelled students may also be barred from the College premises and College sponsored events.
- C. **SUSPENSION:** Separation of the student from the College for a specific time. A notation of suspension will appear on the student's transcript. Formal reapplication to the College also may be required following completion of the suspension period. The meeting of certain requirements may also accompany the suspension, and any readmission can be conditioned on the satisfactory completion and proof of completion of those requirements.
- D. **CONDUCT PROBATION:** Conduct probation is a final and formal warning status issued by the College to the student. Further violations of the Code resulting in a finding of "responsible" will result in suspension or expulsion unless mitigating circumstances or information is identified. Additional restrictions or conditions also may be imposed.
- E. **CONDUCT REPRIMAND:** The student is warned that further misconduct may result in more severe sanctions. The reprimand will indicate that continuation or repetition of specific conduct may be grounds for other sanctions.
- F. **FINANCIAL RESTITUTION:** The student is required to make payment to the College and/or to other persons, groups, or organizations for damage incurred as a result of a violation of this code or College policies. Damages will include not only direct costs of items involved but also indirect costs of College personnel involved.
- G. **OTHER SANCTIONS:** Other sanctions may be imposed instead of or in addition to those specified in this Code. Additional or other sanctions include, but are not limited to:
 - 1. Loss of privileges, consistent with the offense committed such as:
 - a. On-campus dining privileges;
 - b. Restrictions from representing the College or participating in any extracurricular activity;
 - c. On-campus site restriction (e.g. class only).
 - 2. The assignment of projects;

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3. Orders of limited or no contact;
4. Imposition of fines, which will not exceed \$500 for each violation;
5. Confiscation: confiscation for a specified time, of property or materials used in a violation, or are in violation of College policy;
6. Recommended sanctions for alcohol, drugs, and/or substance violations may include but are not limited to:
 - a. Warning, Reprimand, etc.
 - b. Substance Counseling, Referral, etc.
 - c. Parent/Guardian Notification
 - d. \$100 Fine
 - e. Educational Program or Project
 - f. Probation (as listed above)
 - g. Suspension (as listed above)
 - h. Expulsion (as listed above)
7. Statements of understanding: are signed (or mediated) statements that students will abide by all College rules, and policies or specific practices, with the understanding that violation of any rule, regulation, or agreement will result in further sanctions;
8. Referral to Transitions Counseling, or other outside agency for assessment.

Certain violations of this code or College policies may result in suspension or expulsion unless specific and significant mitigating factors are present. This can include first time and/or repeated violations. The presence or involvement of alcohol or drugs will not constitute a mitigating factor. The following list of examples is not meant to be comprehensive.

- A. Incidents of violence, sexual misconduct, and sexual harassment.
- B. Incidents involving drug possession, under the influence and/or use, distribution or sale; including misuse of legal prescription drugs.
- C. Incidents of reckless endangerment, misuse of emergency equipment, or any type of smoking or fire resulting from abuse or negligence.
- D. Incidents of harm brought to oneself or others (including instances when a student knew or should have known such harm might exist or result). This includes instances of hazing, drug involvement, alcohol abuse, driving under the influence, and reckless driving even when the student thought it was a prank.
- E. Incidents involving theft, stealing, or false statements or reports.
- F. Repeat offenses.
- G. Failing to comply with officials in the performance of their official duties.
- H. Acts that constitute a violation of local, state, or federal laws.

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INTERIM SUSPENSION

The College may suspend a student for an interim period pending conduct proceedings or medical, psychiatric, or psychological evaluation. Such interim suspension becomes effective immediately whenever there is information that the continued presence of a student on College premises or at College sponsored activities poses a substantial threat to self or others, or to the stability and continuity of normal College operations. There may also be circumstances in which it is necessary to invoke an interim suspension in furtherance of an ongoing investigation into a conduct code violation and/or a violation of state law.

A student suspended on an interim basis will be given the opportunity to appear before the Administrator within three business days from the effective date of the interim suspension. An informal conference will be held on the following issues only:

- A. The reliability of the information concerning the student's conduct, including the matter of his or her identity.
- B. The question as to whether the conduct and surrounding circumstances reasonably indicate that the continued presence of the student on College premises or at College sponsored activities poses a substantial threat to himself, herself, others, or to the stability and continuance of College functions. In any complaints covered by Title IX (sexual misconduct, sexual harassment, stalking, etc.), the complainant will be given the opportunity to address the appropriateness of interim suspension as well.
- C. Respondent(s) who fail to appear at this informal conference are in violation of the Student Code of Conduct for failure to comply with the instructions of a College official and will be subject to disciplinary sanctions.

GENDER AND SEX-BASED MISCONDUCT

INTRODUCTION

Members of the College community, guests and visitors have the right to be free from all forms of gender and sex-based discrimination, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. All members of the College community are expected to conduct themselves in a manner that does not infringe upon the rights of others. Nicolet College believes in a zero tolerance policy for gender-based misconduct. When an allegation of misconduct is brought to an appropriate administration's attention, and a respondent is found to have violated this policy, serious sanctions will be used to reasonably ensure that such actions are never repeated. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.

OVERVIEW OF EXPECTATIONS WITH RESPECT TO PHYSICAL SEXUAL MISCONDUCT

The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don't. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Silence--without actions demonstrating permission--cannot be assumed to show consent.

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, "No" always means "No," and "Yes" may not always mean "Yes." Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a "No".

SEXUAL MISCONDUCT OFFENSES INCLUDE, BUT ARE NOT LIMITED TO:

- A. Sexual Harassment**
- B. Non-Consensual Sexual Contact (or attempts to commit same)**
- C. Non-Consensual Sexual Intercourse (or attempts to commit same)**
- D. Sexual Exploitation**

A. SEXUAL HARASSMENT

Sexual Harassment is:

1. unwelcome, gender-based verbal or physical conduct that is,
2. sufficiently severe, persistent or pervasive that it,
3. unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the College's educational program and/or activities, and is
4. based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.

B. NON-CONSENSUAL SEXUAL CONTACT

Non-Consensual Sexual Contact is:

1. any intentional sexual touching,
2. however slight,
3. with any object,
4. by a man or a woman upon a man or a woman,
5. that is without consent and/or by force.

a. Sexual Contact includes:

Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

C. NON-CONSENSUAL SEXUAL INTERCOURSE

Non-Consensual Sexual Intercourse is:

1. any sexual intercourse
2. however slight,
3. with any object,
4. by a man or woman upon a man or a woman,
5. that is without consent and/or by force.

a. Intercourse includes:

vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

D. SEXUAL EXPLOITATION

Occurs when a student takes non-consensual or abusive sexual advantage of another for their advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

1. Invasion of sexual privacy;
2. Prostituting another student;
3. Non-consensual video or audio-taping of sexual activity;

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4. Going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
5. Engaging in voyeurism;
6. Knowingly transmitting an STI or HIV to another student;
7. Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
8. Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

ADDITIONAL APPLICABLE DEFINITIONS:

- A. Consent: Consent is clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.
 1. Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
 2. Previous relationships or prior consent cannot imply consent to future sexual acts.
- B. Force: Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent ("Have sex with me or I'll hit you. Okay, don't hit me, I'll do what you want.").
 1. Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

NOTE: There is no requirement that a party resists the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.
 2. In order to give effective consent, one must be of legal age.
 3. Sexual activity with someone who one should know to be -- or based on the circumstances should reasonably have known to be -- mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this policy.
 - a. Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to

understand the “who, what, when, where, why or how” of their sexual interaction).

- (1) This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of rape drugs. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketomine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of this policy.
- b. Use of alcohol or other drugs will never function as a defense for any behavior that violates this policy.
- c. The sexual orientation and/or gender identity of individuals engaging in sexual activity is not relevant to allegations under this policy.

SANCTION STATEMENT

- A. Any student found responsible for violating the policy on Non-Consensual or Forced Sexual Contact (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.*
- B. Any student found responsible for violating the policy on Non-Consensual or Forced Sexual Intercourse will likely face a recommended sanction of suspension or expulsion.*
- C. Any student found responsible for violating the policy on sexual exploitation or sexual harassment will likely receive a recommended sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.*

*The conduct body reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

OTHER MISCONDUCT OFFENSES (WILL FALL UNDER TITLE IX WHEN SEX OR GENDER-BASED)

- A. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
- B. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of gender;
- C. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;

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- D. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the College community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity;
- E. Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally (that is not speech or conduct otherwise protected by the 1st Amendment).
- F. Violence between those in an intimate relationship to each other;
- G. Stalking, defined as repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of a member of the community; or the safety of any of the immediate family of members of the community.

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VICTIM'S BILL OF RIGHTS

In accordance with VAWA Pub. Law 113-4 and the Higher Education Act of 1965 as amended 20 USC 1092 (The Jeanne Clery Act) Nicolet College has adopted the following Victim's Bill of Rights.

All Nicolet College community members have the right to:

- A. Make a report to local law enforcement and/or state police;
- B. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
- C. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
- D. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- E. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
- F. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
- G. Describe the incident to as few institution representatives as practicable and not be required description of the incident;
- H. Be protected from retaliation by the institution, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
- I. Access to at least one level of appeal of a determination;
- J. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
- K. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

ADMINISTRATIVE HEARING PROCEDURE

- A. Complaints of a violation of College policy and the Student Code of Conduct may be referred to an Administrative Hearing.
- B. Conduct Officers will hear each case and measure an individual's level of responsibility via the preponderance of the evidence. This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not the amount of evidence.
- C. The Conduct Officers for an Administrative Hearing will be the Director of Student Success, Director of Risk, Compliance, and Security, or an assigned appropriate designee.
- D. A Respondent may bring written statements and information, as well as material witnesses. Failure to appear at the assigned time without reasonable notice will result in the matter being heard without the benefit of the Respondent's testimony.
- E. Students subject to an Administrative Hearing are afforded the following procedural protection:
 - 1. Notification of the alleged misconduct and day and time of the scheduled hearing will be given to the accused at least three days prior to the hearing.
 - 2. A Respondent will be given the opportunity to accept responsibility for violation(s). If they do not accept responsibility, the student(s) will then have the opportunity to respond to any information or jurisdiction pertaining to the complaint. The Conduct Officers will determine if it is more likely than not that the information indicates a violation. If the student(s) accepts responsibility or is deemed responsible, appropriate sanctions will be administered.
 - 3. The Respondent will have an opportunity to present their information to the Conduct Officer(s) and to respond to information against them. Information may consist of written statements, records, and/or verbal testimony.
 - 4. Hearings will be closed to the public except for the accused, witnesses, and the accused's advisor of choice.
 - 5. Within five (5) days after the Conduct Officer hears the complaint, the accused will receive a letter summarizing the Conduct Officer's decision.

APPEAL PROCEDURES

The findings and/or sanctions imposed by a Conduct Officer post-investigation can be appealed by any party only according to the grounds described below.

All sanctions imposed by the original hearing body will be in effect during the appeal. A request may be made for special consideration in urgent circumstances, but the presumptive stance of the College is that the sanctions will stand. Graduation, study abroad, internships/externships, etc. do not in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal. In cases where the appeal results in reinstatement to the College or of privileges, all reasonable attempts will be made to restore the student to their prior status, recognizing that some opportunities lost may be irretrievable in the short term.

Individuals must petition the Director of Risk, Compliance, and Security within five (5) business days¹ of receiving the written decision for a review of the decision or the sanctions imposed. Any party who files an appeal must do so in writing. The Director of Risk, Compliance, and Security will share the appeal with the other party when appropriate (e.g., if the accused student appeals, the appeal is shared with the complainant, who may also wish to file a response), and then the Director of Risk, Compliance, and Security will draft a response memorandum (also shared with all parties). All appeals and responses are then forwarded to an Appeals Officer for initial review to determine if the appeal meets the limited grounds and is timely. An Appeals Officer may be a Conduct Officer who has not been previously associated with the case, the Vice President for Student Affairs, or the Vice President of Academic Affairs. The original finding and sanction will stand if the appeal is not timely or substantively eligible, and the decision is final. If the appeal has standing, the documentation is forwarded for consideration. The party requesting appeal must show error, as the original finding and sanction are presumed to have been decided reasonably and appropriately. The only grounds for appeal are as follows:

- A. A procedural [or substantive] error occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.);
- B. To consider new evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included;
- C. The sanctions imposed are substantially disproportionate to the severity of the violation.

If it is determined that new evidence should be considered, the complaint will be returned to the original hearing body to reconsider in light of the new evidence only. The reconsideration of the hearing body is not appealable.

If it is determined that a material procedural [or substantive] error occurred, the complaint may return to the original hearing body with instructions to reconvene to remedy the error. Cases where the procedural

¹ "Day" or "business day" means normal operating hours, Monday through Friday, excluding recognized national holidays and days where the College is officially closed. In cases where additional time is needed in the investigation of a complaint, students will be notified accordingly. The College reserves the right to make changes and amendments to this policy and procedure as needed, with appropriate notice to the community.

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or substantive error cannot be cured by the original hearing officers (as in cases of bias), a new hearing on the complaint will be scheduled. The results of a reconvened hearing cannot be appealed. The results of a new hearing can be appealed, once, on the four applicable grounds for appeals.

If it is determined that the sanctions imposed are disproportionate to the severity of the violation the appeals officer will return the complaint to the Conduct Officer, which may then increase, decrease, or otherwise modify the sanctions. This decision is final.

The procedures governing the hearing of appeals include the following:

- A. All parties should be timely informed of the status of requests for appeal, the status of the appeal consideration, and the results of the appeal decision;
- B. Every opportunity to return the appeal to the original hearing body for reconsideration (remand) should be pursued;
- C. Appeals are not intended to be a full rehearing of the complaint (de novo). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the grounds for appeal;
- D. This is not an opportunity for Appeals Officers to substitute their judgment for that of the original hearing body merely because they disagree with its finding and/or sanctions. Appeals decisions are to be deferential to the original hearing body making changes to the finding only where there is clear error and to the sanction only if there is a compelling justification to do so;
- E. Sanctions imposed are implemented immediately unless a Conduct Officer stays their implementation in extraordinary circumstances, pending the outcome of the appeal.

The Appeals Officer will render a written decision on the appeal to all parties within seven (7) business days from hearing of the appeal. An Appeals Officer's decision to deny appeal requests is final.

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APPEALS CONCERNING MATTERS OF SEXUAL MISCONDUCT

Either party may submit a written request for an appeal to the Director of Student Success. In the request, the party must identify the specific grounds upon which the appeal is based and must provide all of the detail the appealing party wants considered in support of the appeal. The Director of Student Success will convene an appeal within five (5) business days of receiving the appeal request.

Where an appeal is requested by the Respondent, the Complainant will be provided with a copy of the Respondent's appeal and invited to respond. Where an appeal is requested by the Complainant, the Respondent will be provided with a copy of the Complainant's appeal and invited to respond. However, in either case, the Appeals Officer will review the appeal statement to determine whether the information contained therein is relevant and material to the determination of the appeal and, in general, the Appeals Officer may redact information that is irrelevant, more prejudicial to a party or witness than probative, an unwarranted invasion of an individual's privacy, or immaterial. The Appeals Officer may also redact statements of personal opinions rather than direct observations or reasonable inferences from the facts, and statements as to general reputation for any character trait, including honesty.

Within seven (7) days of an appeal being filed, the Appeals Officer will schedule a meeting for consideration and disposition of the appeal. The Appeals Officer will be given access to the investigation materials that were made available to the initial Conduct Officer. In considering the appeal, the Appeals Officer may request additional information. Normally, the parties will not appear before the Appeals Officer, though they may be summoned at the discretion of the Appeals Officer.

The Appeals Officer may:

- A. Uphold the original decision;
- B. Remand the matter back to the original hearing body. The Appeals Officer may (but is not required to) take this action when there is a procedural irregularity that could be corrected in a review of the presentation of previously unavailable relevant information that could significantly impact the result of the original hearing body's determination;
- C. Remand the matter to the original Conduct Officer with a recommendation that the penalty be modified, together with an explanation of why the original penalty is deemed inappropriate; or
- D. Remand the matter to an ad hoc review panel composed of authorized individuals not previously involved in the matter. This will be done only in extraordinary cases when, in the consideration opinion of the Appeals Officer, the matter would be best addressed by a newly-constituted body.

Any determination made following a remand of a matter is subject to the Appeals Officer utilizing this same process. In that case, the Appeals Officer may then issue a final determination on the matter.

If there is a conflict of interest, a new Conduct Officer will be appointed as the Appeals Officer. The assigned Appeals Officer concerned of a conflict of interest will provide the Director of Student Success with written notice of their decision, including grounds for the decision, within no fewer than 48 hours of the schedule appeal.

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A record of the appeal will consist of the letter of appeal; any written statements from the parties, and the written decision that acceptable grounds for any appeal were not asserted (if that is the case), and the outcome of the appeal. This record will be appended to the written record of the original decision and will be kept with it as part of the case file maintained by the Director of Risk, Compliance, and Security.

Decisions of the Appeals Officers are final.

ACCESS TO INFORMATION AND RECORDS

- A. All information pertaining to investigations and hearing proceedings may be shared only with College employees who have a legitimate educational interest in the information.
- B. Students who wish to review and examine their files in the Student Conduct Office may do so in accordance with the Family Educational Rights and Privacy Act of 1974, as amended. Students must submit a request at least 24 hours in advance.
- C. Any student who harms him/herself or others, resulting in a medical or emergency, should expect that their parents or whoever is listed on the College's emergency notification form may be contacted without permission from the students.
- D. Complainant(s) of any crime of violence will be given written simultaneous notice of the outcome and any sanctions resulting from the complaint they filed.
- E. Parental Notification: The College believes that parental involvement can be vital to student success. Therefore, Nicolet College may speak to parents or guardians to discuss impending or completed conduct actions, to the extent permitted by law:
 - 1. Notification may be made to parents of any student who is a dependent, regardless of age.
 - 2. Notification may be made to the parents/guardians of students who have violated policies that are "crimes of violence."
 - 3. Notification may be made to parents/guardians of students who are under age 21 when those students have committed violations of the College's alcohol and drug policies.
 - 4. Notification may be made to parents/guardians whenever their student faces an emergency health and/or safety risk.

DEFINITIONS

- A. **“Conduct Hearing”** means a procedure for resolving complaints conducted by an appointed Nicolet College Conduct Officer.
- B. **“Code”** means the Nicolet College Student Code of Conduct.
- C. **“Distribution”** means sharing, the sale, exchanging, gifting, or giving.
- D. **“Organization”** means a number of persons who are associated with each other and have complied with College requirements for registration as an organization.
- E. **“Group”** means a number of persons who are associated with each other and who have not complied with College requirements for registration as an organization.
- F. **“College”** means Nicolet College.
- G. **“Recklessness and/or negligence”** means conduct which one should reasonably be expected to know could create a substantial risk or harm to persons or property or would be likely to interfere with normal College operations.
- H. **“Preponderance of the Evidence”** The federally mandated standard of evidence used to determine whether a violation of the Code has been committed. Under the preponderance of the evidence standard, a violation will be determined to have occurred if, based upon the evidence presented, College authorities conclude that it is more likely than not that the violation was committed. The “Preponderance of the Evidence” standard may also be noted or referred to as “More Likely than Not”.
- I. **“Hearsay information”** is information of a statement other than information stated by a material witness while testifying at the hearing and that is offered to support either the complainant or respondent’s case.
- J. **“Student”** Any person who is currently enrolled and actively engaged in a post-secondary credit course, adult apprenticeship, and/or adult basic education with Nicolet College.
- K. **“Accused Student”** means any student formally accused of violating any policy of the College.
- L. **“College premises”** means buildings or grounds owned, leased, operated, controlled, or directly supervised by the College.
- M. **“College policies”** means:
 - 1. Any and all rules and policies set forth by Nicolet College, or any publication regularly distributed to students.
 - 2. Policies, rules, and values regulating student conduct published by Nicolet College.

- N. **“Sexual Activity”** means:
1. Intentional contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts or object, or making another touch you or themselves with or on any of these body parts or object; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.
 2. Intercourse, meaning vaginal or anal penetration, however slight, by a penis, object, tongue or finger, or oral copulation (mouth to genital contact or genital to mouth contact).
- O. **“Hazing”** means any method of initiation into a student organization/group or any pastime or amusement which threatens, intimidates, causes, or is likely to cause bodily, physical, or emotional harm or injury to any student, employee, or guest of the College as part of a new member process, initiation affiliation or similar activities with respect to the group/organization, regardless of the physical cooperation with or submission to the activities by the victim. Hazing does not refer to customary athletic events or similar contests of competitions.
- P. **“Weapon”** means any object or substance designed or used to inflict a wound, cause injury, or incapacitate, including but not limited to firearms and ammunition, bows and arrows, BB/pellet/air soft guns, paint guns, or any device capable of projecting an object that is capable of causing serious physical injury or death, knives with blades exceeding 2.5 inches in length.
- Q. **“College Official”** means any employee of the College to whom authority has been delegated by an authorized individual.
- R. **“Vice President”** means the Vice President for Student Affairs or Vice President of Academic Affairs.
- S. **“Administrator”** means the Administrator responsible for Student Conduct (also referred to as the Conduct Officer).
- T. **“President”** means the President of Nicolet College.
- U. **“Designee”** means an administrator assigned by authorized personnel with the granting authority who is responsible for a student conduct matter.
- V. **“Presiding Officer”** means the Presiding Officer of Conduct Hearing.
- W. **“College Student Conduct System”** refers to the system outlined in this Student Code of Conduct.
- X. **“Advisor”** means an individual who offers moral support to the student. Within the Conduct Hearing process, both the Complainant and the Respondent are entitled at any meeting or other proceeding which is a part of the investigation and at which the Complainant or the Respondent are present to be accompanied by an Advisor of their choice – including an attorney at law. Such Advisor may be present but may not participate in the meeting or proceeding in any other manner and may not serve as an advocate or spokesperson.

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“Procedural Opportunity” means the accused student(s) will have notice of an alleged violation at or before an informal, non-adversarial meeting with the Administrator or designee to respond to any matters pertaining to the complaint filed against them.

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IN THE ENFORCEMENT OF THIS CODE, THE COLLEGE'S STUDENT CONDUCT SYSTEM FUNCTIONS IN AN ADMINISTRATIVE MANNER. THE COLLEGE'S ADMINISTRATIVE PROCESS PROMOTES FUNDAMENTAL FAIRNESS BUT DOES NOT FOLLOW THE TRADITIONAL COMMON LAW ADVERSARIAL METHOD OF A COURT OF LAW, NOR SHOULD THE COLLEGE'S STUDENT JUDICIAL PROCESS BE CONSIDERED AN EXTENSION OF A COURT OF LAW.