

## **New England Conservatory's Title IX Policy on Sexual Misconduct**

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New England Conservatory (NEC or the “Conservatory”) is committed to maintaining a safe and healthy educational and work environment in which no member of the NEC community is, on the basis of sex, including sexual orientation or gender identity, excluded from participation in, denied the benefits of, or subjected to discrimination in any NEC program or activity. Sexual harassment, including sexual violence, is a form of sex discrimination in that it denies an individual equal access to NEC’s programs or activities. This Title IX Policy is designed to ensure a safe and non-discriminatory educational and work environment and to meet legal requirements, including: Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in the University’s programs or activities; relevant sections of the Violence Against Women Reauthorization Act (VAWA); Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of sex in employment; and Massachusetts laws that prohibit discrimination on the basis of sex, sexual orientation, and gender identity. It does not preclude application or enforcement of other NEC policies.

It is the policy of NEC to provide educational, preventative, and training programs regarding sexual misconduct; to encourage reporting of incidents; to respond promptly and equitably to sexual misconduct in a manner that is not deliberately indifferent; to prevent incidents of sexual misconduct from denying or limiting an individual’s ability to participate in or benefit from NEC’s programs or activities; to offer to the parties supportive measures as appropriate, as reasonably available, and without fee or charge; and to provide prompt and equitable methods of resolution.

Violations of this Policy may result in the imposition of sanctions ranging from an admonition or warning up to, and including, termination, dismissal, or expulsion. The remedies designed to restore or preserve equal access to NEC’s programs or activities may range from course-related adjustments and no contact orders to restrictions on access to campus, campus locations, or campus activities. Retaliation against an individual for making a report or complaint of sexual harassment, or for participating or refusing to participate in any proceeding regarding such a complaint, or for opposing discriminatory practices is prohibited.

This Title IX policy explains the process that will apply to reports of sexual misconduct as defined by the regulations implemented by the Department of Education (“DOE”) in August 2020 (the “federal Title IX regulations”) and applies to all members of the NEC community. Allegations of sexual misconduct involving any member of the NEC community should be reported to the Title IX Coordinator:

Katrina Chapman, Title IX Coordinator

[Katrina.Chapman@necmusic.edu](mailto:Katrina.Chapman@necmusic.edu)

Tel: 617-585-1299

Allegations of misconduct that do not meet the definition of sexual misconduct as defined by DOE regulations (including definitions of prohibited conduct and jurisdictional elements) may be prohibited by other NEC policies, including, but not limited to, NEC's Gender-Based Misconduct Policy. Members of the NEC community with questions about whether alleged misconduct falls under this or the Gender-Based Misconduct Policy should contact the Title IX Coordinator.

## **TITLE IX PROHIBITED CONDUCT**

### **Sexual Assault**

Having or attempting to have sexual intercourse or sexual contact with another individual without consent. This includes sexual intercourse or sexual contact achieved by the use or threat of force or coercion (see definition for "Coercion"), where an individual does not consent (see definition for "Consent") to the sexual act, or where an individual is incapacitated. Sexual assault includes the following:

- Penetrating or attempting to penetrate another individual without their consent. This includes vaginal or anal penetration, however slight, with a body part or object, or oral copulation by mouth-to-genital contact.
- Having or attempting to have sexual contact with another individual without consent. Sexual contact includes kissing, touching the intimate parts of another, causing the other to touch one's intimate parts, or disrobing of another without permission. Intimate parts may include the breasts, genitals, buttocks, mouth, or any other part of the body that is touched in a sexual manner.

### **Dating Violence**

Violence committed by a person who is or has been in a romantic or intimate relationship with the victim. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

### **Domestic Violence**

Violence committed by: a current or former spouse or intimate partner of the victim, or someone similarly situated; a person with whom the victim shares a child in common; or any other person against an adult or youth victim who is protected from that person's acts under

the domestic or family violence laws of the location in which the crime of violence occurred.

### **Title IX Sexual Harassment**

Title IX Sexual Harassment includes conduct on the basis of sex that meets one or more of the following definitions:

- 1) Conditioning the provision of any educational benefit or service on a person's participation in unwelcome sexual conduct ("quid pro quo" sexual harassment); or
- 2) 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 Conservatory's educational programs or activities ("hostile environment" sexual harassment).

Determinations that an individual committed sexual assault, dating violence, domestic violence, or stalking, as defined in this Prohibited Conduct section, may constitute one form of hostile environment sexual harassment and/or may be considered with other forms of hostile environment sexual harassment.

### **Stalking**

A course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress. This includes cyber-stalking, a particular form of stalking in which electronic media is used to pursue, harass, or make unwelcome contact with another person. Stalking may involve individuals who are known to one another or have an intimate or sexual relationship, or may involve individuals not known to one another.

### **Retaliation**

Acts or attempts to retaliate or seek retribution against individuals who report conducted prohibited by this Title IX Policy, assist another in making a report, or participate in an investigation of the report, including the Complainant, Respondent, or any individual or group of individuals involved in the investigation and/or resolution of an allegation. Retaliation includes subjecting a person to an adverse employment or educational action because they made a complaint under any portion of the Title IX Policy, or responded to, assisted or participated in any manner in an investigation under the Title IX Policy. Retaliation may also include abuse or violence and other forms of harassment. Any individual or group of individuals can engage in prohibited retaliation.

Retaliation allegations may be consolidated with other forms of prohibited conduct defined in this section if the facts and circumstances significantly overlap. If the facts and circumstances do not significantly overlap, NEC retains discretion to review the allegation under another NEC policy.

## **STANDARD OF PROOF**

**Preponderance of the Evidence.** The standard of evidence that NEC uses to determine both students' and employees' responsibility for violating this TIX Policy and in any allegations of

misconduct, including but not limited to claims of discrimination or harassment, is the preponderance of the evidence. This means that in reviewing allegations of Prohibited Conduct, the totality of the evidence will be considered to determine whether the Respondent is more likely than not to have been responsible for a violation of the Title IX Policy.

- The preponderance of the evidence standard is not the standard used for criminal culpability in most jurisdictions and a determination of responsibility under the Title IX Policy does not equate with a finding of a violation of criminal laws;
- Conversely, lack of a prosecution, dismissal, or lack of a criminal conviction does not necessarily imply that the Conservatory's Title IX Policy was not violated. The two procedures are significantly different and use different standards for determining violations.

## **REPORTING PROHIBITED CONDUCT**

Reports that fall within the DOE's August 2020 Title IX regulations will follow this process.

NEC encourages community members who have experienced any potential gender-based misconduct, whether or not the conduct is Prohibited Conduct under Title IX, to inform the Title IX Coordinator, so that the Title IX Coordinator can offer appropriate supportive measures and information regarding available reporting options under applicable policies.

NEC can address reports of violations of the Title IX Policy most completely when we are able to identify and communicate with the people reporting policy violations. The benefits of direct reporting include a greater ability for NEC to follow-up on the information in the report and to provide resources, support, and options to those reporting. However, NEC also provides individuals with the option to submit an anonymous report to NEC's Title IX Coordinator without disclosing their identity, identifying the Complainant (if different than the reporting party), Respondent, or requesting any action. Those wishing to submit a report anonymously may submit the Violations of Title IX and Gender-Based Misconduct Policies form (available on the website [here](#)) without personal identifying information. Students and employees may also file an anonymous report through EthicsPoint, by logging into My NEC and navigating to the Security & Safety tab.

If a report is submitted anonymously, NEC will review the information in the report, but may be limited in its ability to take action with regard to the information that is shared.

### **1. Informal Reports**

After receiving an informal report of conduct that could fall under the Title IX Policy, the Title IX Coordinator, or their designee (the "Title IX Officer"), will take a number of initial steps; these initial steps are not an investigation. Rather, these initial steps will enable NEC to assess the need to take any immediate action to address the safety and health needs of the parties

involved in a matter and to help the parties determine the next appropriate steps, whether under this Title IX Policy or a referral to another Conservatory policy, including, without limitation, the Gender-Based Misconduct Policy.

These initial steps may include, but are not limited to, the following:

- A. The Title IX Officer will contact the Complainant (if known) and encourage them to meet virtually or in person to discuss the nature and circumstances of the report, review relevant documentation that is available, and describe the various options available to them.
- B. Regardless of whether a Complainant decides to participate in an adjudication process, they may be entitled to supportive measures, as defined in the Definitions section of this Policy.

The decision to implement supportive measures will be communicated by the Title IX Officer in writing. NEC will seek to be transparent with regard to supportive measures that impact both parties. The Conservatory may be limited in certain situations when student or employee privacy issues prevent disclosures.

- C. The Title IX Officer will review the processes, options, and protections in this Title IX Policy. The Title IX Officer will also explain the right to submit a formal complaint, and the right to delay or decline to submit a formal complaint to NEC. The Title IX Officer may also advise the Complainant of the opportunity to make a report to local law enforcement. Such a report will not change any obligation of NEC to investigate the matter, but it may briefly delay the timing of the investigation, such as if a law enforcement agency requests that NEC delay its process for a reasonable amount of time to allow it to gather evidence of criminal conduct. NEC does not use the same process or standard of proof as a criminal process. Typically, NEC will only inquire about criminal processes if they impact an individual's ability to access or use NEC's process. In no instance will a concurrent criminal proceeding, by itself, lead to an adverse inference against the Respondent.

## **2. Formal Complaint**

A Complainant or the Title IX Coordinator may submit a formal complaint at any time by preparing a written document that is physically or electronically signed by the Complainant or Title IX Coordinator, alleges prohibited conduct as defined in this Policy, and requests that NEC investigate the allegation. The formal complaint may be submitted to the Title IX Coordinator in any of the following ways:

- a. By delivering, mailing, or otherwise transmitting the formal complaint to the Title IX Coordinator;
- b. By emailing the formal complaint to [katrina.chapman@necmusic.edu](mailto:katrina.chapman@necmusic.edu);

- c. By completing a Title IX and Gender Based Misconduct formal complaint Form; or
- d. Through any other means that results in the Title IX Coordinator receiving the person's signed formal complaint.

If the Complainant declines to proceed with a Title IX investigation and does not submit a formal complaint, the Title IX Officer will weigh that request against NEC's obligation to address any risk of harm to the community based on the allegations in a report and may sign a formal complaint against another party if it is determined that NEC is obligated to respond due to a concern related to the safety of the NEC community. In such situations, the Title IX Officer and/or NEC is not a party and will provide notice, as set forth below, to both the Complainant and Respondent.

As soon as practicable after receiving a formal complaint, and with sufficient time to prepare for any interview or meeting, the Title IX Coordinator will provide a written notice to all known Parties that will include: a description of the allegations as they are understood at the time, including, to the extent known the name(s) of the Parties, the date and location of the conduct in question, the allegations and the portions of the policy that are alleged to have been violated, any interim measures in place that either party must be made aware, and a statement that the Respondent is presumed not responsible for the alleged conduct. This written notice does not constitute a finding or a determination of responsibility. The written notice will be updated or amended if new allegations are raised by either party and accepted for investigation.

In appropriate circumstances, to address imminent threats posed to any person's physical health or safety as a result of the allegations in a formal complaint, NEC may evaluate whether to remove a Respondent from its Education Program and Activities on an emergency basis or to place an employee on leave during the Title IX Investigation Process.

- a. Emergency Removal. NEC may remove a Respondent from its Education Program or Activity on an emergency basis following an individualized safety and risk analysis that determines there is an immediate threat to the physical health or safety of any individual arising from the allegations of Prohibited Conduct. The Respondent shall have the opportunity to challenge the decision immediately following the removal.
- b. Administrative Leave. NEC may place an employee on leave during the Title IX Investigation Process.

### **3. Preliminary Review of Formal Complaint**

Upon receipt of a formal complaint, the Title IX Officer will conduct a preliminary review to determine whether:

- (a.) the conduct is alleged to have occurred in the United States;
- (b.) the conduct is alleged to have occurred in an Education Program or Activity; and
- (c.) whether the formal complaint alleges facts that, if true, may constitute a violation of the Title IX Policy.

If the Title IX Officer determines that the formal complaint meets with above criteria, the matter will be referred to the Title IX investigation process.

If a formal complaint alleges that a Respondent engaged in conduct that potentially violates both NEC's Title IX Policy and other NEC policies, the Title IX Officer may within their discretion choose to resolve some or all the non-Title IX charges pursuant to the processes in NEC's Title IX Policy and will contemporaneously inform all parties of such determinations. This decision will be made at the outset of the notice of the complaint or as soon as reasonably practicable after the allegations become clear.

#### **4. Dismissal of Formal Complaint**

If a formal complaint is submitted that does not allege Title IX Prohibited Conduct, as defined above, it must be dismissed in compliance with federal Title IX regulations. Any allegation in a formal complaint that is dismissed because it does not constitute Title IX Prohibited Conduct or does not fall within the scope and jurisdiction of this Policy, may be addressed through another NEC policy, such as NEC's Gender-Based Misconduct Policy.

A formal complaint may also be dismissed by the Title IX Officer, in whole or in part, at any time if:

- a Complainant notifies the Title IX Officer in writing that they wish to withdraw the formal complaint or any allegation(s) contained in that formal complaint; or
- the Title IX Officer determines that specific circumstances will prevent NEC from gathering sufficient information to reach a determination on the formal complaint, or any allegations contained in the formal complaint.

If a formal complaint is dismissed under this section, the Title IX Officer will provide a Notice of Dismissal of the formal complaint to the Parties and information regarding how to appeal the decision.

#### **5. Title IX Investigation Process**

- A. Notice of an Investigation.** If it is determined that an investigation will begin, the Title IX Officer will send a written notice to both parties advising them that the preliminary review has concluded that the matter should be referred to the Title IX Investigation Process.
- B. Advisors.** Each party may have a single advisor of their choice present during any formal disciplinary proceeding, including any related meeting, interview, or hearing, held pursuant to the Title IX Policy. A party may consult with their advisor during any related meeting, interview, or hearing. Except to the extent expressly permitted in the hearing process outlined below, advisors cannot act as a speaking advocate at a meeting or interview. NEC staff and internal/external personnel involved in the

Title IX Investigation Phase may delay or terminate interviews or meetings, remove or dismiss advisors, and/or proceed with the investigation if an advisor is disruptive or otherwise refuses to comply with the requirements of this policy. An advisor is subject to the same confidentiality expectations applicable to others in attendance. Accommodations, including scheduling of interviews or reviews, generally will not be made for any advisors if they unduly delay the process. An advisor is not permitted to attend a meeting, interview, or other proceeding without the party they are advising being present unless they receive the advance approval of the Title IX Officer. NEC reserves the right to take appropriate action in response to any advisor who disrupts the investigation and/or hearing process or who does not abide by rules and protocols regarding their participation, including, without limitation to protocols identified in this Policy.

Any person serving as a party's advisor is prohibited from publicly disclosing private information learned during this process, including information protected under the Family Educational Rights and Privacy Act ("FERPA") or other state or federal laws. Further, advisors are expected to maintain the privacy of all parties and witnesses to the greatest extent possible. If any advisor is concerned about violating this assurance of privacy to gather evidence, they should raise such concerns with the Title IX Officer immediately so that it can be appropriately addressed to protect the sensitivity of the information without limiting the ability of either party to find and present relevant evidence.

The Conservatory will typically address communications to the Parties and not to any advisor (even an attorney-advisor or parent-advisor).

- C. **Designation of Investigator.** The Title IX Officer will designate at least one investigator to conduct a prompt, fair, and impartial investigation of the formal complaint and prepare a report of investigative findings (the "Investigative Report"). All investigators will be qualified and trained individuals employed by or engaged by the Conservatory for the purpose of conducting investigations under the Title IX Policy. The Title IX Officer will provide the Parties with the name of the person(s) assigned to investigate the reported conduct. As soon as possible, but no later than three (3) calendar days after delivery of the identity of the Investigator(s), the parties shall inform the Title IX Officer (in writing) of any conflicts of interest with regard to the selected Investigator(s). The Title IX Officer will consider the nature of the conflict and determine if different individuals should be assigned as Investigator(s). The Title IX Officer's decision regarding any conflicts is final. The Title IX Officer may consult with other Conservatory personnel to discuss any conflicts of interest.
- D. **Nature of the Investigation.** The investigation provides an opportunity for fact-finding and will include separate interviews with the Complainant, the Respondent,

and any relevant witnesses. The Investigator(s) will provide the parties with advance notice of meetings at which their presence is required.

- E. **The Parties' Identification of Potential Witness and Documentation.** The Parties have the opportunity (and are expected) to provide the Investigator(s) with the identification of potential witnesses who have specific information about the reported conduct and with whom they would like the Investigator(s) to speak. The Parties also have the opportunity (and are expected) to provide the Investigator(s) any documentation or other items or questions they would like to be considered. All information described in this section should be presented to the Investigator(s) in writing and include a brief description as to how the potential witnesses, documents, and/or items are relevant to the reported conduct. This information must be provided to the Investigator(s) during the Investigation Phase and without delay upon becoming aware of it. The Investigator(s) will exercise discretion in their determination of what information to consider and which potential witnesses can provide relevant information to the investigation. The Conservatory reserves the right to limit the submission of evidence and information that was within the Party's possession or knowledge during the Investigative Phase if the Conservatory determines that the information was withheld for strategic advantage, *e.g.*, a surprise witness at the hearing. Furthermore, the Conservatory reserves the right to interview any member of the Conservatory community that may have specific information about the incident that has been reported.
- F. **Investigation Prohibitions.** At no point will the investigation require both Parties to be in the same room. At no point will either party be permitted to question or cross-examine the other party or any witness directly during the investigation, determination or appeal process. The Parties may ask questions of the other party and/or witnesses at the Determination Hearing, described below, but all such questions must be asked through the party's advisor. Additionally, the Investigator(s) will not consider information related to either party's sexual history unless deemed relevant to the incident in question.
- G. **Other Informal Processes.** At any time prior to convening a Determination Hearing, either party may request an informal resolution of a complaint rather than an investigation and/or hearing by contacting the Title IX Officer. Under the DOE regulations, NEC is not permitted to offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student. The Title IX Officer will assess the request for informal resolution against the severity of the alleged violation and the potential risks to campus community members. All parties and the Title IX Officer must agree in writing to informal resolution for this option to be used. The Title IX Officer will designate a Conservatory representative or outside service provider to facilitate a dialogue with the parties in an attempt to reach a resolution. The Title IX Officer can end such a process if it becomes unproductive and/or abusive. The allegation will only be deemed resolved when the parties

expressly agree to an outcome that is acceptable to them and which is approved by the Title IX Officer in consultation with other appropriate Conservatory administrators. Either party may withdraw from the informal resolution process at any time. The informal resolution process will be conducted in accordance with procedures specified by the Title IX Officer, as determined in his/her sole discretion.

## **6. Investigative Report and Determination of Responsibility by Determination Hearing**

- A. Content of the Investigative Report.** At the conclusion of the Investigation Phase, the Investigator(s) will prepare an Investigative Report, which should include a summary of the factual information presented during the Investigation Phase, a separate section where the Investigator(s) point out relevant consistencies or inconsistencies (if any) between all sources of information. Attached to the Investigative Report or made available with the Investigative Report, the Investigator will provide any relevant evidence gathered, whether inculpatory (*i.e.*, proving the responsibility of a party) or exculpatory (*i.e.*, proving that a party did not commit the conduct alleged). The Investigative Report will not include a determination as to whether a party has violated the Title IX Policy or what sanctions may be appropriate. These determinations will be made by the Determination Officer, as described below.
- B. Review by the Parties.** Both parties will be informed of their opportunity to review the entire Investigative Report and that they may submit written comments and/or questions about the content of the Investigative Report to the Investigator(s) within ten (10) calendar days of the date they are notified that the Investigative Report is available for review. This review will take place at a location and in a manner determined by the Conservatory. The time to submit written comments can be extended for a brief period if the Title IX Officer concludes, in their sole discretion, that the additional time is warranted. In circumstances where an extension is provided to one party, it will be provided to the other party, as well. Likewise, the location and manner of reviewing the Investigative Report can be modified if the Title IX Officer deems it necessary and appropriate. Each party may have their advisor present as they review the Investigative Report, but the Conservatory reserves the right to monitor the review or create appropriate procedures to protect the privacy and sensitivity of the materials in question.
1. Photographs or any other copies of the Investigative Report are not allowed by either party or advisor. The comments submitted by the Parties may not exceed ten (10) double spaced pages unless a higher page limit is otherwise determined to be necessary and appropriate in the sole discretion of the Title IX Officer. After reviewing the submissions, if any, from the parties, the Investigator(s) may determine that either additional investigation is required or no further investigation is needed. The investigator has the sole discretion to determine if any information submitted is irrelevant and therefore not to

be considered and/or will be redacted. If further investigation is conducted, the Investigator(s) will include any additional relevant information in the Investigative Report.

2. If, at any point in this review process or the prior investigation, it becomes apparent that a witness will not take part and subject themselves to examination in the Determination Hearing described in Section II(E), below, the Investigator may revise the Investigative Report to remove that information so as not to impact the Determination Hearing. If this decision is made prior to the Parties' review, it will be noted in a cover memo to the Investigative Report. If the decision is made following the Parties' review, it will be communicated to the Parties and they will be informed in writing of any information that will be removed prior to the Determination Hearing.
3. The Investigative Report will then be submitted to the Title IX Officer. Any submissions made by either party pursuant to this section, as well as any other documentation deemed relevant by the Investigator(s), will be attached to the Investigative Report.

**C. The Determination Hearing: Conflicts and Provision of Investigative Report.** The Title IX Officer will inform the parties of the identity of the Determination Officer(s). All Determination Officers will be qualified and trained individuals employed by or engaged by the Conservatory for the purpose of conducting determination hearings under the Title IX Policy. No later than three (3) calendar days after delivery of the identity of the assigned Determination Officer(s), the Parties should inform the Title IX Officer (in writing) of any conflicts of interest in regard to the selected Determination Officer(s). If a conflict of interest is raised regarding the individual(s) assigned, the Title IX Officer will consider the nature of the conflict and determine if different individual(s) should be assigned to hear the matter. This decision regarding any conflicts is final. The Title IX Officer will then provide the Determination Officer(s) with the Investigative Report and set a subsequent date for the Determination Hearing to determine responsibility.<sup>1</sup>

**D. Review and Determination by the Determination Officer.** The Determination Officer will make a determination as to whether or not the Respondent is responsible for violating the Title IX Policy by having engaged in some or all of the reported conduct. The Determination Officer has the authority to accept the Investigative Report without seeking additional investigation, or to ask the Investigator(s) to conduct additional investigation on specific points prior to the

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<sup>1</sup> The Conservatory will typically identify one individual to serve as the Determination Officer. That individual will preside over hearings and make relevant judgment calls regarding evidence and the propriety of questions. However, the Conservatory reserves the right to designate up to three individuals, including internal or external determination officers.

hearing. If further investigation is required, the information learned will be conveyed to the parties at least five (5) days prior to the hearing.

- E. **Hearing Process.** Any formal complaints filed under this Policy are adjudicated through live hearings that can be conducted in person or virtually, as required by federal Title IX regulations. The following are the roles and processes to be followed during the hearing. The parties will receive copies of policies regarding the submission and consideration of evidence that may be used during a hearing.
1. The Determination Officer will preside over the hearing and make the decision by a preponderance of the evidence as to whether or not the Respondent violated the policy provisions at issue. The Determination Officer has broad authority to determine the process, timing, and conduct of a hearing. For example, the Determination Officer will determine the order of presentation, timing and overall duration of the hearing, what information and evidence will be heard, what information and questions are relevant to the determination of the matter, and what cross-examination questions will or will not be permitted.
  2. Each party may have an advisor of their choice present at a hearing for the limited purpose of conducting cross-examination on behalf of that party. Advisors may be, but are not required to be, attorneys. If a party does not have an advisor of their choice present at a hearing, the Conservatory will, without fee or charge to the party, provide an advisor, who may or may not be an attorney. No later than five (5) business days before the hearing, parties should inform the Title IX Officer of the identity of any advisor who will accompany them to the hearing, so that the Conservatory will know whether or not it needs to arrange for a Conservatory-provided advisor.
  3. At a time and manner deemed appropriate by the Determination Officer, the advisor for each party will be permitted to ask the other party and any witnesses all relevant cross-examination questions and follow-up questions, including those challenging credibility. Except for that limited role, advisors may not participate actively in the hearing and may not speak or otherwise communicate on the part of the party that the advisor is advising. However, the advisor may consult privately in a non-disruptive manner with their advisee during and/or at a recess in the hearing. The Conservatory reserves the right to take appropriate action regarding any advisor who disrupts the process, or who does not abide by the restrictions on their participation as determined in the sole discretion of the hearing officer, which may include exclusion of the advisor from the hearing and the appointment of an alternate Conservatory-provided advisor.

4. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
5. Information protected under a legally recognized privilege (*e.g.*, privileged communications between a party and their physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a treatment capacity, or privileged communications between a party and their attorney), are not relevant unless the person holding the privilege has waived the privilege.
6. At the request of either party, the Conservatory will provide for the hearing to occur with the Parties located in separate rooms with technology enabling the Determination Officer and Parties to simultaneously see and hear the party or the witness answering questions. Live hearings may be conducted with all parties physically present in the same geographic location or, at Conservatory's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
7. If a party or witness does not submit to cross-examination at the live hearing, the Determination Officer may not rely on any statement of that party or witness in reaching a determination regarding responsibility in compliance with federal Title IX regulations. The Determination Officer will not draw an inference about the determination regarding responsibility based *solely* on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
8. If the Determination Officer determines that a party is responsible for violating this Policy, they will also determine Sanctions. The Determination Officer may request from the Conservatory information on prior sanctioning decisions so that the Determination Officer can apply a consistent sanction in the matter at hand.
9. The Conservatory will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review. It will not be provided for distribution and the Conservatory will provide the same protective measures as used in Section 6(B) of this Policy regarding review of investigative reports.

- F. **Notification of Investigation Outcome.** Not later than seven (7) business days after the Determination Officer's final determination of a complaint, the Title IX Officer shall simultaneously provide both parties with written notice of (i) the outcome of the disciplinary proceeding and any sanctions imposed on the Respondent; and (ii) the procedures for either party to appeal the result of the disciplinary proceeding.

## 7. Appeals

- A. The following process applies to all appeals. Within five (5) calendar days of the delivery of the decision to dismiss a formal complaint (whether in whole or in part) or the notification of investigation outcome, either party may appeal the decision by submitting to the Title IX Officer a letter stating why they believe the decision was inappropriate. A party may only appeal on the following grounds:
- Procedural error that materially prejudiced the findings/outcome.
  - Newly discovered material information that was not known/available and which likely could have changed the finding of responsibility or the sanction imposed had it been available.
  - Bias or a conflict of interest with regard to the Title IX Officer, Investigator(s), or Determination Officer(s) that materially impacted the outcome or the sanction.
- B. The party submitting the appeal must set forth in detail the grounds for review and must attach all materials that they wish to have considered in the appeal process. The Title IX Officer will provide a copy of the appeal to the other party, at which time they may provide a written response if they choose.
- C. The Appellate Officer(s): The Title IX Officer will provide both parties with the names of the Appellate Officer(s).<sup>2</sup> Appellate Officers may be NEC employees or engaged by the Conservatory for the purpose of conducting appellate review under the Title IX Policy. As soon as possible, but no later than three (3) calendar days after delivery of the identity of the Appellate Officer(s), the Parties should inform the Title IX Officer in writing of any conflicts of interest in regard to the assigned Appellate Officer. The Title IX Officer will consider the nature of the conflict and determine if different individual(s) should be assigned to review the appeal. This decision regarding any conflicts is final. The Title IX Officer may consult with other Conservatory personnel to discuss any conflicts of interest.

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<sup>2</sup> The Conservatory reserves the right to designate up to three individuals to review the appeal. The decision to appoint more than one Appellate Officer will be made based on the individual claims and the specific challenges raised on appeal.

- D. Sanctions of all types may be imposed while an appeal is pending at the sole discretion of the Conservatory.

## 8. Additional Considerations

- A. **Disability Accommodations.** The Conservatory is committed to ensuring that all community members, and applicants, have an equal opportunity to participate in an Education Program or Activity. If any person requires an accommodation because of disability to access any part of this process, they may make that request to the Dean of Students or designee (students) or Director of Human Resources or designee (employees or other community members). Any requested accommodations will be provided in consultation with the Title IX Officer to evaluate any impact on the rights or protections of any party or witness.
- B. **Duty of Honesty.** All parties and witnesses are obligated to be honest during the course of the entire process set forth in this Policy. Any person who knowingly makes a false statement – either explicitly or by omission – in connection with any part of the process may be subject to separate disciplinary action. A report by a Complainant or others made in good faith, however, is not considered false merely because the evidence does not ultimately support the allegation of violation of the Policy.
- C. **Duty of Cooperation.** All Parties and witnesses are obligated to cooperate with the Title IX Officer and any other personnel charged with implementing the Policy. Any person who knowingly interferes with the actions taken to implement the reporting, investigation, or resolution of matters under the Policy may be subject to separate and/or additional disciplinary action. The Duty of Cooperation does not apply to an individual's decision not to take part in this process out of consideration of constitutional rights in a criminal investigation involving the same or similar facts and circumstances.
- D. **Amnesty.** To encourage students to refer incidents involving possible discrimination or safety concerns, NEC generally will extend amnesty for drug and alcohol policy violations to students who report alleged Title IX prohibited conduct and/or gender-based misconduct, who participate in an investigation process, or who are helping someone to obtain support related to alcohol or drug consumption or related to discrimination or harassment. NEC may review the appropriateness of amnesty if the conduct at issue significantly harmed others or compromised community safety. A student for whom an alcohol or drug violation is waived may be referred for a meeting with an appropriate provider for substance abuse education.
- E. **Special Situations.** The Conservatory retains the right to determine, in its sole discretion, if it will address a report of conduct under this Policy administratively and outside of the process described in this Title IX Policy when the safety of the

Conservatory community is at risk, if there are extenuating circumstances involving either of the Parties, or if the Title IX Officer, in consultation with appropriate administrators, determines it is in the best interest of the Conservatory and/or the Conservatory community to do so. If the Conservatory alters the process set forth in this Policy, it will contemporaneously communicate changes to the parties.

- F. **Delegation.** Where the Title IX Coordinator or any other NEC official or employee is listed as the designated point of contact for any role in the Policy, the Title IX Coordinator may designate another qualified member of the Conservatory community or an external actor to assume the role at issue, as necessary and appropriate.
- G. **Withdrawal While Charges Are Pending.** Should a student Respondent withdraw from NEC while charges are pending, the investigative process will proceed in the student's absence to a reasonable resolution. The student will not be permitted to enroll in an NEC program unless all sanctions have been satisfied. The student will not have access to an academic transcript until the allegations have been resolved. Should an employee Respondent decide to resign from NEC while charges are pending, the investigation process will proceed in the employee's absence to a reasonable resolution. The employee will not be eligible for employment with NEC unless all sanctions have been satisfied. If a Complainant withdraws from NEC or leave's NEC's employment, NEC will review the applicable standing requirements and guidance set forth by the U.S. Department of Education to determine whether the matter may proceed.
- H. **Respect for Privacy.** NEC values the privacy of individuals involved in the reporting, investigation, and/or resolution of matters subject to the Policy. The U.S. Department of Education has indicated that there are situations in which it may be necessary for an institution to override a request for privacy or confidentiality in order to meet its obligations under the law. In the event circumstances result in NEC overriding a request for privacy or confidentiality to meet its obligations, it will do so with the utmost sensitivity and respect for the circumstances and the individuals involved.
- I. **Recording the Proceedings.** The Parties are not permitted to make individual video, audio, or other electronic, photographic, or digital recordings of any meetings or proceedings held under the Title IX Policy or of the Investigative Report. The Title IX Officer may make exceptions to this prohibition in limited circumstances if he or she concludes, in his or her sole discretion, that a recording is warranted based upon advance written request of the Party that explains the need for the recording.
- J. **Respondent Voluntary Agreement to Policy Violation.** At any point prior to the conclusion of the investigation, a Respondent may agree in writing to the alleged

violation(s) of the Policy and may offer a proposed sanction. It is within NEC's sole discretion to accept the admission or the proposed sanction or assign a different sanction.

## **Definitions**

The Conservatory reserves the right to update the definitions in this document to create more clarity for our community. If an updated definition changes any of the listed prohibited conduct, the Conservatory will communicate that to the Parties if relevant to any pending proceeding. Similarly, the Conservatory may be required to update or change such definitions in response to state and federal laws. Accordingly, please ensure that you review the Definitions section to make sure you have the most updated definitions. If you have any questions about the definitions, regardless of whether you are involved in a process under either Policy, please contact the Title IX Coordinator.

### **Actual Knowledge or Notice to the Conservatory**

The Conservatory has actual notice of alleged Title IX prohibited conduct if a report concerning the conduct is made to the Conservatory's Title IX Coordinator, or to one of the following Conservatory officials who have authority to institute corrective measures on the Conservatory's behalf:

- Director of Human Resources
- Dean of Students

### **Advisor**

A person chosen by a party, who may but need not be an attorney, who provides support and advice to the party during any stage of the process set forth in the Title IX Policy.

### **Complainant**

A person who, at the time they submit a formal complaint, is currently participating in, or attempting to participate in, the Conservatory's domestic educational programs or activities and who alleges they experienced prohibited conduct as defined by the Title IX Policy. If an individual is a student or employee at another institution and makes an allegation against an individual who is a student or employee at the Conservatory, the Title IX Officer may exercise discretion in signing a complaint for the aggrieved party. In such situations, the parties will be duly noticed in accord with the Title IX Policy and the Conservatory will not be considered a party to the matter, though it will maintain the burden of proving that any individual violated the Title IX Policy.

### **Consent and Related Concepts**

The Conservatory defines consent and the related concepts as follows:

- **Consent**

- Sexual consent is when all parties agree to engage in sexual activity. Consent should always be mutual, voluntary and given without pressure, intimidation, or fear.
  - Consent must be freely and affirmatively communicated in order to participate in sexual activity or behavior. It can be expressed either by words or clear, unambiguous actions. It is the responsibility of the person who wants to engage in sexual activity to ensure consent of their partner(s).
  - Consent must be obtained at each step and be present throughout the sexual activity. A participant can withdraw consent or communicate that they no longer consent to continuing the activity. If there is confusion as to whether anyone has consented or continues to consent to sexual activity, it is essential that the participants stop the activity until the confusion is clearly and mutually resolved.
  - Silence, lack of protest, or lack of resistance does not indicate consent.
  - Consent is not present if it results from the use of physical force, threat of physical force, intimidation, coercion (see below), incapacitation (see below), or any other factor that would eliminate an individual's ability to exercise free will to choose whether or not to have sexual contact.
  - A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, a willingness to engage in sexual activity must be freely and affirmatively communicated each time.
- **Coercion**
    - Coercion is the use or attempted use of pressure and/or oppressive behavior, including express or implied threats, intimidation, or physical force, which places a person in fear of immediate harm or physical injury or causes a person to engage in unwelcome sexual activity. A person's words or conduct cannot amount to coercion unless they wrongfully impair the other's freedom of will and ability to choose whether or not to engage in sexual activity. Coercion also includes administering or pressuring another to consume a drug, intoxicant, or similar substance with the intent to impair that person's ability to consent prior to engaging in sexual activity.
- **Incapacitation**
    - Incapacitation is defined as the inability, temporarily or permanently, to give consent, because an individual is mentally and/or physically helpless,

unconscious, or unaware that the sexual activity is occurring. This may or may not be due to alcohol or other drugs (see below).

- An individual who is incapacitated cannot consent to sexual activity.

- **The Impact of Alcohol or Other Drugs on Consent**

Alcohol and drugs impair a person's decision-making capacity, awareness of the consequences, and ability to make informed judgments. Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual harassment, misconduct, or violence and does not diminish one's responsibility to obtain consent.

The use of alcohol or drugs can limit a person's ability to freely and clearly give consent. Similarly, the use of alcohol or drugs can create confusion over whether or not consent has been freely and clearly sought or given. It is important that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

- Warning signs of incapacitation due to the use of alcohol or other drugs may include, but are not limited to, one or more of the following: slurred speech, vomiting, unsteady gait, combativeness, emotional volatility, and/or sleeping.
- The perspective of a reasonable person will be the basis for determining whether a Respondent should have been aware of the amount of the ingestion of alcohol or drugs by a Complainant, or of the extent to which the use of alcohol or drugs impacted a Complainant's ability to give consent.
  - For example, an individual who is in a blackout may appear to act normally and be giving consent, but may not actually have conscious awareness or the ability to consent to or later recall the events in question. The extent to which a person in this state affirmatively gives words or actions indicating a willingness to engage in sexual activity (and the person reasonably could not have known of the person's level of alcohol consumption and/or level of impairment) must be evaluated in determining whether consent has been given.

### **Educational Program or Activity**

Locations, events, or circumstances in which the Conservatory exercises substantial control over the location or context in which the conduct occurs, as well as in any building owned or controlled by a student organization that is officially recognized by the Conservatory.

### **Formal Complaint**

A document submitted by a Complainant alleging that a Respondent engaged in conduct prohibited by the Title IX Policy and requesting that the Conservatory investigate the allegation. In exceptional situations, the Title IX Officer may sign a formal complaint in place of a Complainant. If the Title IX Officer signs a formal complaint, the Title IX Officer is not a party to a matter and the party who has standing to be a Complainant under the Title IX Policy shall receive all requisite rights. Similarly, the Respondent will receive the name of the Complainant, written notice as described in the Formal Complaint section of the Title IX Policy, and all other requisite rights.

### **Parties**

The Complainant(s) and the Respondent(s).

### **Relevant**

As used in this Policy, “relevant” refers to a fact, witness, or other piece of information that a reasonable person could conclude makes a material disputed fact or event more or less likely to be true.

### **Respondent**

A person reported to have engaged in conduct that could constitute conduct prohibited by NEC’s Title IX Policy.

### **Sanctions**

Punitive or educational measures imposed by the Conservatory in response to a determination that a Respondent has violated the Title IX Policy or another Conservatory policy, including the Gender-Based Misconduct Policy. Sanctions may include, but are not limited to: expulsion, termination, suspension, probation, reprimand, warning, restitution, education/counseling requirement; restrictions on participation in a program or activity; loss of privileges; loss of leadership opportunities or positions; housing restriction; and/or restrictions on employment by the Conservatory. If a Respondent is found to have violated the Title IX Policy or other NEC policies, a determination of appropriate sanctions will include consideration of the nature and circumstances of the misconduct; the impact of the misconduct on the Complainant and/or on others in the Conservatory community; the disciplinary history of the Respondent; and any other mitigating or aggravating circumstances.

### **Supportive Measures**

Non-disciplinary, non-punitive individualized services, offered as appropriate, as reasonably available, and without fee or charge to either the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures are designed to restore or preserve equal access to the Conservatory’s educational programs or activities, and they will be designed so as not to unreasonably burden the other party. Supportive measures may include but are not limited to: counseling; academic accommodations, such as extensions of deadlines or other course-related adjustments; course changes or drops; modifications of work or class schedules; campus escort services; mutual

restrictions on contact between the parties; residential accommodations, including but not limited to arranging for new housing, or providing temporary housing options, as appropriate; changes in work locations; leaves of absence; increased security and monitoring of certain areas of the campus; and no trespass notices, among others. Factors to be considered in determining reasonable supportive measure may include the following:

- the specific need expressed by the party;
- the burden on the non-requesting party;
- the severity and/or pervasiveness of the allegations;
- whether the parties share the same residence hall, dining hall, class, extracurricular activities, transportation and/or job location; and
- whether other judicial measures have been taken to protect a party or the parties.