

New England Conservatory's Gender-Based Misconduct Policy

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. NEC prohibits all of its community members from engaging in any and all forms of gender-based misconduct. Gender-based misconduct is a broad term which encompasses unwelcome conduct of a sexual nature. This Gender-Based Misconduct Policy is designed to ensure a safe and non-discriminatory educational and work environment and to meet legal requirements, including: 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 gender-based misconduct; to encourage reporting of incidents; to respond promptly and equitably to gender-based misconduct in a manner that is not deliberately indifferent; to prevent incidents of gender-based 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 gender-based misconduct, or for participating or refusing to participate in any proceeding regarding such a complaint, or for opposing discriminatory practices is prohibited.

In August 2020, the federal government updated regulations implementing Title IX of the Education Amendments of 1972 ("Title IX"). These regulations prescribe specific procedures that NEC must follow when addressing formal complaints concerning conduct that falls within the scope and jurisdiction of Title IX. Accordingly, the procedures set forth in NEC's Title IX Policy will be used to address formal complaints received by the Conservatory which allege conduct that falls within the scope and jurisdiction of the federal Title IX regulations. The scope and jurisdiction of NEC's Gender-Based Misconduct Policy is more expansive than the scope and

jurisdiction of NEC's Title IX Policy. This Gender-Based Misconduct Policy is intended to address reports alleging that a member of the NEC community has engaged in gender-based misconduct which does not fall within the scope and jurisdiction of the Title IX Policy. Matters that may be addressed under this Policy include complaints filed by individuals who are neither currently affiliated with NEC nor seeking to participate in Conservatory programs or activities; complaints concerning conduct that reportedly occurred in a location outside the United States or where NEC did not exercise substantial control; and alleged gender-based misconduct that does not constitute Prohibited Conduct under Title IX, but which would violate other applicable state and federal laws, such as Title VII of the Civil Rights Act of 1964 or Massachusetts General Laws c. 151 B. Consistent with both NEC's values and applicable law, NEC's Gender-Based Misconduct Policy prohibits not only discrimination based on sex, but also discrimination based upon an individual's gender, gender identity or expression, or sexual orientation.

If NEC receives a complaint alleging that a Respondent engaged in conduct that potentially violates both NEC's Title IX Policy and other Conservatory policies, including this Gender-Based Misconduct Policy, NEC's Title IX Coordinator may within their discretion, and in alignment with federal law, choose to resolve some or all of the non-Title IX charges pursuant to the process in NEC's Title IX Policy and will contemporaneously inform all parties of such determinations. To the extent that additional alleged violations of NEC policies other than gender-based misconduct arise in the context of this Policy, such related allegations may be addressed in accordance with the process in this Policy. The Title IX Coordinator will consult with relevant NEC administrators, such as the Dean of Students and/or Director of Human Resources, in making such a determination and contemporaneously inform all parties of such determinations.

Allegations of gender-based misconduct involving any member of the NEC community should be reported to the Title IX Coordinator :

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Tel: 617-585-1299

PROHIBITED CONDUCT UNDER THE GENDER-BASED MISCONDUCT POLICY

Gender-Based Misconduct

Gender-based misconduct is a broad term which encompasses unwelcome conduct of a sexual nature that is prohibited by the Conservatory. The term gender-based misconduct includes, but is not limited to, gender-related harassment, sex discrimination, sexual harassment, sexual

assault, sexual violence, rape, intimate partner abuse, domestic violence, and stalking that does not fall within the scope or jurisdiction of NEC's Title IX Policy. Gender-Based Misconduct may also include an attempt to engage in Sexual Misconduct as defined by this Policy. Gender-based misconduct affects individuals of all genders, gender identities, gender expressions, and sexual orientation, and does not discriminate by racial, social, or economic background.

Sexual Misconduct

Sexual Misconduct as defined by this Policy includes:

- **Non-Consensual Sexual Penetration** – Any sexual penetration (anal, oral, or vaginal), however slight, with any part of one's body or with any object, upon another person, without Consent, penetration achieved by the use or threat of force or coercion, or where an individual is incapacitated. Non-consensual penetration includes both situations where a person's body is penetrated without Consent and situations where a person is forced, caused or made, without their Consent, to penetrate another person's body.
- **Non-Consensual Sexual Contact** – Any intentional touching of a sexual nature, however slight, with any part of one's body or any object, upon another person, without Consent, or any disrobing of another person without that person's Consent. This includes, without limitation, non-consensual sexual contact achieved by the use or threat of force or coercion, or where an individual is incapacitated.
- **Sexual Exploitation** – An act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any non-legitimate purpose. Examples include, but are not limited to: observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved; non-consensual streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved; prostituting another individual; knowingly exposing another individual to a sexually transmitted disease or virus without his or her knowledge; and inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

Intimate Partner Abuse

Any abusive behavior between those who are in or have been in an intimate or romantic relationship with each other (this type of abuse may also be referred to as dating violence, domestic violence, or relationship violence). Abusive behavior may be emotional, psychological, physical and/or sexual, including any behavior that one person in an intimate or romantic relationship uses in order to control the other. Intimate partner abuse or violence may be a single act or a pattern of behavior in relationships. Examples include but are not limited to: acts

of violence or physical harm; threats to cause another physical, emotional, or other harm; demeaning or derogatory communications that amount to abusive behavior; preventing contact with family or friends; property damage; threats of violence to one's self, one's self, one's sexual or romantic partner or to the family members or friends of the sexual or romantic partner.

Certain forms of sexual harassment, sexual misconduct, sexual exploitation, stalking, harm to others, emotional and psychological abuse, harassing conduct, and retaliation may all be forms of intimate partner violence when committed by a person who is or has been involved in a sexual, dating or other social relationship of a romantic or intimate nature with the reporting party.

Pregnancy and Lactation Discrimination

NEC prohibits discrimination on the basis of pregnancy or lactation. Individuals that are pregnant, have given birth, or have considerations related to pregnancy and birth (including lactation) may request a reasonable accommodation to enable them to attend school and/or perform their professional responsibilities.

Sexual Harassment

Any unwelcome sexual, sex-based, and/or gender-based verbal, written, online, and/or physical conduct which also falls within the definition of hostile environment harassment and/or quid pro quo sexual harassment.

- Hostile environment sexual harassment exists where harassment is sufficiently severe, persistent, or pervasive, and is objectively offensive such that it unreasonably interferes with, limits or denies someone's ability to participate in or benefit from the Conservatory's educational, employment, social, residential, or other programs or activities. In assessing whether conduct is hostile environment sexual harassment, the totality of the circumstances will be considered.
- Quid pro quo sexual harassment exists when there are unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature, where submission to, or rejection of, such conduct results in adverse educational or employment consequences. Quid pro quo harassment may also exist when an explicit or implicit threat of adverse action or a promise of a benefit is conditioned on submission to, or rejection of, such requests.
- Behaviors that may constitute sexual harassment include but are not limited to:
 - o Sexual advances, regardless of whether or not they involve physical touching;
 - o Requesting or demanding sexual favors with respect to employment, academic or other NEC activities;
 - o Lewd or sexually suggestive comments, jokes, gestures, or innuendos;
 - o Displaying sexually suggestive objects or pictures;

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 conduct prohibited by this 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 Gender-Based Misconduct Policy, or responded to, assisted or participated in any manner in an investigation under the Gender-Based Misconduct Policy. Retaliation may also include abuse or violence and other forms of harassment. Any individual or group of individuals, not just a Respondent or Complainant can engage in 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.

Prohibited Sexual Relations with Students

No employee shall request or accept sexual favors from, or initiate or engage in a romantic or sexual relationship with, any student of any status at NEC. Unless specific written permission is provided in extremely limited circumstances¹ to be discussed with NEC's Human Resources office, this is an absolute prohibition.

Amorous Relationships Between Individuals of Different Conservatory Status

Unless specific written permission is provided in extremely limited circumstances to be discussed with NEC's Human Resources office, amorous relationships between individuals of different Conservatory status are prohibited.

In a personal relationship between a faculty or staff member and an individual for whom that person has no current professional responsibility, the faculty or staff member may unexpectedly be placed in a position of responsibility for the other person's instruction or evaluation (e.g. being called upon to write a letter of recommendation or to serve on an admissions or selection committee involving the individual). In addition, relationships between individuals of different Conservatory status can lead to perceptions of inequitable academic or professional advantage. Although graduate students, teaching fellows, tutors, and

¹ NEC requires notice of any existing relationships that may exist, and the factors that NEC will consider in granting permission to continue such a relationship will be extremely fact specific and limited. For example, if an individual was married to a faculty member and decided to return to NEC to pursue a degree opportunity, that factor would be considered, but NEC may put in place expectations governing the provision of academic or professional opportunities between anyone in such a relationship.

undergraduate course assistants may be less accustomed than faculty to thinking of themselves as being in a position of greater authority by virtue of their professional responsibilities, they should recognize that they might be viewed as being in a position of authority.

STANDARD OF PROOF

Preponderance of the Evidence. The standard of evidence that NEC uses to determine both students' and employees' responsibility for violating this Gender-Based Misconduct 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 Gender-Based Misconduct 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 Gender-Based Misconduct 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 Gender-Based Misconduct Policy was not violated. The two procedures are significantly different and use different standards for determining violations.

REPORTING PROHIBITED CONDUCT

NEC encourages community members who have experienced any potential gender-based misconduct 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 Gender-Based Misconduct 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 online form (available on the website [here: https://necmusic.edu/student-care-and-concern](https://necmusic.edu/student-care-and-concern)) 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.

The following is the process by which the New England Conservatory will investigate a report of a violation of the Gender Based Misconduct Policy (“GBM Policy”).

1. Initial Steps

After receiving an informal report of conduct that could fall under the GBM 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 the Conservatory to assess the need to take any immediate action to address the safety and health needs of the parties involved in a matter, to help the parties determine the next appropriate steps, whether under this GBM Policy or a referral to another Conservatory policy.

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

- A. **Contact Complainant.** 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 reported conduct, review relevant documentation that is available, and describe the various options available to them.
- B. **Review Supportive Measures.** 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.
- C. **Review Reporting Options.** The Title IX Officer will explain the GBM Policy and the different options and protections available to the Parties. The Title IX Officer will also explain the right to report and the right to delay or decline to report the matter to the Conservatory. 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

If the Complainant wishes to move forward with an investigation under this Policy, the Complainant must provide a statement of allegations in writing, referred to in this Policy as the 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 and alleges prohibited conduct as defined in this Policy. The formal complaint may be submitted to the Title IX Coordinator through any of the following mechanisms:

- 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;
- 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 an 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 Complainant and 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. Further, 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 Investigation Phase.

- a. Emergency Removal. NEC may remove a Respondent from an 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 Complaint Resolution Process.

Upon reviewing any written complaint materials, if the Title IX Officer determines that the conduct would, if proven, be prohibited by this Policy, the matter will be referred to the next phase of this process.

If a formal complaint alleges that a Respondent engaged in conduct that potentially violates both NEC's GBM and other NEC policies, the Title IX Officer may within their discretion choose to resolve some or all the non-GBM charges pursuant to the processes in the GBM 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. In compliance with law, any allegations of conduct that meet the definition of Title IX Prohibited Conduct as defined by NEC's Title IX Policy must be resolved pursuant to the process in NEC's Title IX Policy.

3. Dismissal of Formal Complaint

If a formal complaint is submitted that does not allege Prohibited Conduct, as defined in this Policy, it will be dismissed without limiting the Complainant's ability to provide additional information, or the Title IX Officer may refer the matter directly to the staff that is charged with executing any other relevant policy that may be implicated. For example, a claim of harassment that is based on race or disability status, even if proven, may not violate the GBM Policy. The Conservatory could, in that circumstance, refer the matter directly to the student or employee process to evaluate alleged violations of NEC's prohibition on discrimination and harassment.

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.

4. The Investigation Phase

- A. **Notice of an Investigation.** If it is determined that an investigation will begin, the Title IX Officer will send a written notice to the Parties advising them that the preliminary review has concluded that the matter should be referred for investigation under this Policy.

- B. **Advisors.** Each party may have a single advisor of their choice present during any formal disciplinary proceeding, including any related meeting or interview, held pursuant to the GBM Policy. A party may consult with their advisor during any meeting or interview. Advisors cannot act as a speaking advocate at a meeting or interview. NEC staff and internal/external personnel involved in the investigation phase may delay or terminate meetings or interviews, 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 phase or determination meeting 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 reported conduct 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 GBM 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, 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 persons, 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. 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. 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 Panel, either party may request an informal resolution of a complaint rather than an investigation and/or hearing by contacting the Title IX Officer. 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 their sole discretion.

5. Investigative Report and Determination of Responsibility by Determination Panel

- 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 GBM Policy or what sanctions may be appropriate. These determinations will be made by the Determination Panel, as described below.
- B. **Review by the Parties.** The 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 secure location and in a secure 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 secure 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. 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. Assigning the Determination Panel. The Title IX Officer will inform the Parties of the identity of the Determination Panel, which will typically include between one and three employees of the Conservatory.² Students may not serve on a Determination Panel. No later than three (3) calendar days after delivery of the identity of the assigned Determination Panel, the Parties should inform the Title IX Officer (in writing) of any conflicts of interest with regard to the selected Determination Panel. If a conflict of interest is raised regarding any individual 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 may consult with other Conservatory personnel to discuss any conflicts of interest.

After the members of the Determination Panel are finalized, the Title IX Officer will provide the Determination Panel with the opportunity to conduct a preliminary review of the Investigative Report. After this preliminary review, the Determination Panel 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 Determination Meeting. If further investigation is required, the Parties will be notified and any information learned will be conveyed to the Parties at least five (5) days prior to the Determination Meeting.

D. Determination Meeting. Once the Determination Panel has completed its preliminary review of the Investigative Report, the Title IX Officer will notify the parties of the date of a Determination Meeting in which the Determination Panel will consider the report and make a determination as to whether there is a violation of the GBM Policy. The Parties will receive copies of any policies regarding submission and consideration of evidence that will apply during the Determination Meeting.

During this meeting, the Determination Panel has the option to request to interview the parties. The Parties will be notified in advance if the Determination Panel will request to interview them during the Determination Meeting. After reviewing the Investigative Report and interviewing the parties (if applicable), the Determination Panel will make the decision by a preponderance of the evidence as to whether or not the Respondent violated the policy provisions at issue and, if so, the Sanctions that will apply. If the Determination Panel determines the Respondent is responsible for violating this Policy,

² Typically the Determination Panel will include more than one individual. However, in circumstances in which only limited facts are in dispute, the Conservatory reserves the right to appoint a single Determination Panel member.

they may request from the Conservatory information on prior sanctioning decisions so that they can apply a consistent sanction in the matter at hand.

- E. **Notification of Investigation Outcome.** Not later than seven (7) business days after the Determination Panel's determination, the Title IX Officer will inform the parties simultaneously and in writing of (i) the outcome of the disciplinary proceeding; and (ii) the procedures for either party to appeal the result of the disciplinary proceeding.

6. 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 Panel 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.³ As soon as possible, but no later than three (3) calendar days after delivery of the identity of the Appellate Officer, 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.

³ 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.

7. 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 made by a Complainant or others 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 personnel charged with implementing the GBM 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 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 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 Officer or any other Conservatory official or employee is listed as the designated point of contact for any role in the Policy, the Title IX Officer may designate another qualified member of the Conservatory community or appoint a qualified external person 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 leaves NEC's employment, NEC will review the applicable federal and state requirements 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 GBM 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 GBM Policy or of the Investigative Report. The Title IX Officer may make exceptions to this prohibition in limited circumstances if they conclude, in their 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.

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 GBM Policy.

Complainant

A person who alleges they experienced prohibited conduct by an NEC community member as defined by the GBM 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 GBM 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 GBM 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 GBM Policy, and all other requisite rights.

Parties

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

Relevant

As used in the GBM 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 member of the NEC community who is reported to have engaged in conduct that is prohibited under the GBM Policy.

Sanctions

Punitive or educational measures imposed by the Conservatory in response to a determination that a Respondent has violated the GBM Policy or another Conservatory 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 GBM 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.