

DEFINITIONS FOR THE TITLE IX SEXUAL MISCONDUCT POLICY AND RELATED PROCESS

The following definitions supplement New England Conservatory's Title IX Sexual Misconduct Policy ("Title IX Policy"). Section One provides general definitions that help elucidate the Conservatory's Title IX Policy, which can be found at <https://necmusic.edu/title-ix/definitions>. Section Two defines the conduct specifically prohibited by the Title IX Policy.

The Conservatory reserves the right to update the definitions in this document to create more clarity for our community. Similarly, the Conservatory may be required to update or change such definitions in response to state and federal laws. Accordingly, please ensure that you check back to the link where this document resides to make sure you have the most updated definitions.

Section One: General Definitions

Actual Knowledge or Notice to the Conservatory

The Conservatory has actual notice of alleged Title IX prohibited conduct only if a report concerning the conduct is made to the Conservatory's Title IX Coordinator, a Deputy 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. 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, parties and advisors are expected to maintain the privacy and respect the privacy concerns 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.

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.
 - **Alcohol or Other Drugs**

The Conservatory considers any sexual contact while under the influence of alcohol or

other drugs to be risky behavior. 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.

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.

- 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 an atmosphere of confusion over whether or not consent has been freely and clearly sought or given. It is especially 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 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 Responding Party (see below) should have been aware of the amount of the ingestion of alcohol or drugs by the reporting party, or of the extent to which the use of alcohol or drugs impacted a Reporting Party'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 filed by a Reporting Party alleging that another individual engaged in conduct prohibited by this Title IX Policy (*see Section Two*, below) and requesting that the Conservatory investigate the allegation. In exceptional situations, the Title IX Officer may sign a complaint in place of a Reporting Party. 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 Reporting Party under this Title

IX Policy shall receive the rights afforded under this Policy. Similarly, the Responding Party will receive the name of the Reporting Party and other information that constitutes requisite notice.

Parties

Both the Reporting Party and the Responding Party. Note that the Conservatory will typically address communications to the parties and not to any advisor (even an attorney-advisor) or parent.

Standard of Proof: Preponderance of the Evidence

The Conservatory uses the preponderance of the evidence standard (*i.e.*, it is more likely than not that the reported incident and/or behavior violated Conservatory sexual harassment and/or violence policies). Therefore, all findings and determinations of responsibility under this Title IX Policy will be made using this preponderance of the evidence standard. Please note:

- 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 utilize different standards for determining violations.

Relevant

As used in these procedures, "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. Information about a Reporting Party's sexual predisposition or prior sexual behavior is generally not considered relevant and will not be considered in the process. An example where information about past sexual behavior may be considered relevant is if offered to prove that someone other than the Responding Party committed the conduct.

Reporting Party

A person who, at the time they file 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 below. 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.

Responding Party

A person reported to be the perpetrator of conduct that could violate a form of prohibited conduct set forth in Section Two, below, or any other form of conduct consolidated into the process set forth in the Title IX Policy.

Sanctions

Punitive or educational measures imposed by the Conservatory in response to a determination that a respondent has violated this Title IX 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 Responding Party is found to have violated this Title IX Policy, a determination of appropriate sanctions will include consideration of the nature and circumstances of the misconduct; the impact of the misconduct on the Reporting Party and/or on others in the Conservatory community; the disciplinary history of the Responding Party; 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 Reporting Party or the Responding Party 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.

Section Two: Definitions of Prohibited Conduct Under the Title IX Policy

Sexual Misconduct

The Conservatory prohibits all forms of sexual misconduct. Sexual misconduct refers to a broad spectrum of behavior encompassing sexual harassment and all forms of non-consensual sexual activity. Sexual misconduct affects individuals of all genders, gender identities, gender expressions, and sexual orientation, and does not discriminate by racial, social, or economic background.

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, where an individual does not consent (see definition for “Consent” above) 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.

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.

Sexual exploitation is prohibited behavior that will typically be addressed through other policies unless it is consolidated with other forms of prohibited conduct in this section. In those situations, the Conservatory requires a substantial factual overlap with the allegations of the specific matter at hand before this Title IX Policy will be utilized.

Intimate Partner Violence

Intimate partner violence, also referred to as dating violence, domestic violence, or relationship violence, includes any act of violence or threatened act of violence against a person who is, or has been involved in, a sexual or dating relationship with that person. It may involve one act or an ongoing pattern of behavior. Intimate partner violence can encompass a broad range of behavior, including, but not limited to threats, assault, property damage, violence or threat of violence to one’s self, one’s sexual or romantic partner or to the family members or friends of the sexual or romantic partner. Intimate partner violence affects individuals of all genders, gender identities, gender expressions, and sexual orientation and does not discriminate by racial, social, or economic background.

The Conservatory will not tolerate intimate partner violence of any form. The Conservatory also recognizes that certain forms of sexual harassment, sexual assault, 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. In such situations, all potential charges may be included.

Sexual Harassment

Sexual harassment is a form of discriminatory harassment occurring within an employment or educational context that federal and state law addresses with very specific provisions. In cases where sexual harassment is alleged, the Conservatory has a duty to act promptly, so as to assure that if such harassment is, in fact, occurring or has occurred, corrective action is taken and further harm is prevented.

Unwelcome sexual advances, requests of sexual favors, and/or other verbal or physical contact of a sexual nature constitute sexual harassment when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's academic or employment success (also known as *quid pro quo* harassment),
- submission to or rejection of such conduct by an individual is used as the basis for academic or employment evaluation and decisions affecting such an individual (also known as *quid pro quo* harassment), or
- such conduct has the purpose or effect of substantially interfering with an individual's work performance, or creating an intimidating, hostile, or offensive living, learning, or work environment (also known as the creation of a hostile environment).

The effect of sexual harassment will be evaluated based on the perspective of a reasonable person in the position of a Reporting Party. A single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to provide a hostile environment, particularly if the harassment is physical. However, under the new federal regulations, behavior must be severe and pervasive, as well as subjectively and objectively offensive. That is, not only must the Reporting Party feel that the behavior is offensive, but a reasonable person similarly situated must also consider such behavior to be offensive.

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 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 the reporting party, responding party, or any individual or group of individuals involved in the investigation and/or resolution of an allegation; including subjecting a person to an adverse employment or educational action because they made a complaint under any portion of this Title IX Policy or responded to, assisted or participated in any manner in an investigation under this Title IX Policy. Any individual or

group of individuals, not just a responding party or reporting party, can be guilty of retaliation. Retaliation may include continued abuse or violence and other forms of harassment.

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, then the Conservatory retains discretion to adjudicate the allegation under a different but appropriate policy. For example, if a Responding Party retaliates against a Reporting Party with regard to the filing of a complaint, that behavior could be consolidated with the other prohibited conduct alleged, provided appropriate notice is afforded. On the other hand, if the retaliatory conduct is committed by one of the parties' friend group who are not otherwise subject to a grievance under this Title IX Policy, that behavior could be adjudicated under another student or employee conduct policy which prohibits such behavior.