

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

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New England Conservatory (NEC) is committed to providing a safe learning and working environment. We comply with all state and federal guidelines relating to sexual misconduct, including Title IX of the Higher Education Amendment Act (1972), the Violence Against Women Act (1994 and 2013), and the Campus Sexual Violence Elimination Act (2013). This policy applies to allegations of sexual misconduct at NEC as mandated by Title IX of the Educational Amendments of 1972, and applies to all members of the NEC community. Allegations of sexual misconduct involving any member of the NEC community should be reported to a Title IX Officer:

Nick Macke, Title IX Coordinator  
Office of Human Resources  
St. Botolph Building, room 203  
617-585-1229

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.

### **1) PROHIBITED CONDUCT UNDER THE TITLE IX POLICY**

#### **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.

## **2) PROCESS**

Under the Department of Education's Title IX Regulations, effective August 14, 2020, the following procedures will apply only to a narrow category of cases falling under [New England Conservatory's Title IX Sexual Misconduct Policy \("Title IX Policy"\)](#). Those cases meeting the definitions and jurisdictional elements, as well as in the [Definitions section of this Title IX Policy](#), will follow this process. Those cases that do not fit within these new guidelines will be handled through the Conservatory's other sexual misconduct and non-discrimination processes. This distinction is not to suggest that any case is more or less important, but instead a reflection of federal regulations that apply to only a specifically-identified set of cases. If you are unclear about any of the provisions below and would like to get more information, you may speak on a non-confidential basis with a Title IX Officer.

### **1. Initial Steps**

After receiving a report of conduct that could fall under the Title IX Policy, 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 Title IX Policy or a referral to another Conservatory policy.

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

- A. The Title IX Officer will contact the party making the initial allegation (the “Reporting Party”) 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. Regardless of whether a Reporting Party decides to participate in an adjudication process, they may be entitled to supportive measures. Supportive measures, as defined in the [Definitions section of this Policy](#), are 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 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, the following: 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 requesting party;
  - the burden of the measure, if any, on the other party;
  - the severity and/or pervasiveness of the allegations;
  - whether the parties share the same residence hall, dining hall, class, performing or practice spaces, extracurricular activities, transportation and/or job location; and
  - whether other judicial measures have been taken to protect a party or the parties.

The decision to impose supportive measures or any interim restrictions will be communicated by the Title IX Officer in writing. The Conservatory will seek to be transparent with regard to the supportive measures provided to the parties and which 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 explain the Title IX 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 parties may choose to report to such conduct to local law enforcement if the conduct is potentially criminal in nature. Such a report will not change the Conservatory's obligation to potentially investigate the matter, but it may briefly delay the timing of the investigation if a law enforcement agency requests that the Conservatory delay its process for a reasonable amount of time to allow it to gather evidence of criminal conduct. The Conservatory will typically not consider a criminal proceeding on the same facts in its process because the Conservatory does not use the same process or standard of proof as a criminal process. Typically, the Conservatory will only inquire about criminal processes if they impact an individual's ability to access or utilize the Conservatory's process. In no instance will a concurrent criminal proceeding, by itself, lead to an adverse inference against the Responding Party.
- D. The Title IX Officer will also discuss the next steps in terms of formally reporting allegations of sexual misconduct. If the Reporting Party wishes to move forward with a formal complaint under this Policy, the Reporting Party must provide a statement of allegations in writing. If, at this time, the Reporting Party requests that the process not move forward or move forward under a different policy, the Conservatory will weigh that request against the obligation to address any risk of harm to the Reporting Party or other individuals in the community given the nature of the incident. The Conservatory reserves the right to move forward with a formal complaint process unilaterally by signing a complaint or statement of allegations against another party. This will be utilized in limited situations in which the Conservatory has a concern related to the safety of the broader community. In such situations, the Conservatory is not a party and will provide notice, as set forth below, to both the Reporting and Responding Party
- E. Upon reviewing any written complaint materials, if the Title IX Officer determines that the conduct would, if proven, be prohibited by this Policy, it will move to the next phase of this process. If the conduct, if proven, would not implicate this Policy, the Title IX Officer may dismiss the matter without limiting the individual'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 Title IX Policy. The Conservatory could, in

that circumstance, refer the matter directly to the process prohibiting general discrimination and harassment. The Title IX Officer also has sole discretion to include behavior that may fall outside of the range of behavior prohibited in this Policy, however, any behavior that is included within the formal complaint process must have certain factual overlap and will be entitled to the process set forth below even if the behavior would be subject to a lower review process through another policy. If, lesser conduct is included and then the Title IX prohibited conduct is dismissed for any reason, the Title IX Officer has the discretion to refer any remaining matters back to the original process that they would have fallen under if not for the consolidation with the Title IX matter.

## 2. The Investigation Phase

- A. **Notice of an Investigation.** If it is determined that an investigation will begin, the Title IX Officer will prepare a written notice to both parties that will include a description of the allegations as they are understood at the time and including 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 Responding Party 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.
  
- B. **Information about Advisors in Connection with this Policy.** In connection with an allegation of sexual misconduct, as defined in the [Definitions section of this Policy](#), 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. Except to the extent expressly permitted in the hearing process outlined below, the advisor may advise their respective party privately, but cannot act as a speaking advocate at a meeting. Conservatory staff and internal/external investigators may delay or terminate 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 as outlined in the Student Handbook. Accommodations, including scheduling of interviews or reviews, generally will not be made for any advisors if they unduly delay the process. The advisor is not permitted to attend a meeting or proceeding without the party they are advising being present without the prior approval of the Title IX Officer. The Conservatory reserves the right to take appropriate action regarding any advisor who disrupts the process or who does not abide by the rules regarding their participation.

- 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 selected from a group of 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 reporting party, the responding party, 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 must 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, *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. 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.

### 3. 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 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. 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 Office will inform the parties of the identity of the Determination Officer(s), who may be an internal member of the Conservatory or an external actor retained to be impartial. 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 meet 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 Responding Party 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 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 mandate. The following are the roles and processes to be followed during the hearing.
1. The Determination Officer(s) will preside over the hearings and make the decision by a preponderance of the evidence as to whether or not the Responding Party violated the policy provisions at issue. The Determination Officer(s) have broad authority to determine the process, timing, and conduct of a hearing. For example, the Determination Officer(s) 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. If an additional professional is specified to assist with these decisions, the parties will be informed and the feedback will be considered a recommendation to be approved by the decision maker.
  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.

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<sup>1</sup> The Conservatory will typically utilize 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. The Conservatory reserves the right to change the composition of this role to include up to three individuals, as well as one external individual to make recommendations to the Determination Officer or Determination Panel as to evidentiary decisions.

3. At a time and manner deemed appropriate by the Determination Officer(s), 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. Scheduling accommodations generally will not be made for advisors if they delay the process. 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 Reporting Party's prior sexual behavior are offered to prove that someone other than the Responding Party committed the conduct alleged by the Reporting Party, or if the questions and evidence concern specific incidents of the Reporting Party's prior sexual behavior with respect to the Responding Party 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 hearing 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 will not rely on any statement of that party or witness in reaching a determination regarding responsibility. 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, he or she 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. 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 Conservatory will provide the same protective measures as used in Section 3(B) regarding review of investigative reports.

F. **Notification of Investigation Outcome.** 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.

#### 4. Appeals

- A. The following process applies to all appeals. Within five (5) calendar days of the delivery of the decision, 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) for their case.<sup>2</sup> 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. The Title IX Officer will consider the nature of the conflict and determine if different individual(s) should be assigned to review the appeal.
- D. Sanctions of all types may be imposed while an appeal is pending at the sole discretion of the Conservatory.

## 5. Additional Issues

- A. **Disability Accommodations.** The Conservatory is committed to ensuring that all community members, and applicants, have an equal opportunity to participate in all of its programs and activities. 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. Any accommodations will be provided in consult with the Title IX Officer to ensure it does not impact the rights or protections of any party or witness.
- B. **Duty of Honesty.** All parties and witnesses are obligated to be completely 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 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 persons 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. Please note that the Duty of Cooperation will not be utilized to undermine an individual’s decision not to take part in this process if it would force them to forfeit any constitutional rights in a criminal investigation involving the same or similar facts and circumstances.
- D. **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 herein 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,

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<sup>2</sup> The Conservatory reserves the right to assign one or up to three individuals, who may be internal or external actors, to review the appeal. This decision will typically be made based on the individual claims investigated, the length or complexity of the factual record, and the specific challenges raised on appeal.

determines it is in the best interest of the Conservatory and/or the Conservatory community to do so. If the Conservatory utilizes this provision to alter the process set forth in this Policy, it will clearly communicate changes to the parties in a reasonable and timely manner.

- E. **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 an external actor to assume the role at issue, as necessary and appropriate.
  
- F. **Withdrawal While Charges Pending.** Should a Responding Party-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 return to NEC unless all sanctions have been satisfied. The student will not have access to an academic transcript until the allegations have been resolved. In the employment context, should an employee-Responding Party 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 permitted to reapply for new employment with NEC unless all sanctions have been satisfied. If a Reporting Party withdraws, NEC will review the applicable standing requirements set forth by the U.S. Department of Education to determine whether the matter may proceed.
  
- G. **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 provided guidance indicating 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.
  
- H. **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 Policy or these procedures or the Investigative Report. The Title IX Coordinator 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, and upon written request of the Party seeking the recording that explains the need for the recording. The hearing process described above will be recorded by NEC and the recording will only be shared as set forth in this Policy.

- I. **Responding Party 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.

### 3) Definitions

The following definitions supplement NEC's Title IX Sexual Misconduct Policy ("Title IX Policy"). General definitions that help elucidate the Conservatory's Title IX Policy can be found at <https://necmusic.edu/title-ix/definitions>. 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.

#### **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**

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.