

New England Conservatory Formal Review Process for Sex-Based Harassment Complaints Involving NEC Students

I. Jurisdiction and Scope of Process

This Formal Review Process for Sex-Based Harassment Complaints Involving NEC Students explains the process New England Conservatory (NEC) will use to review a complaint of a potential violation of NEC's [Policy Against Sex Discrimination](#) (the "Policy") alleging sex-based harassment that involves either a student complainant or a student respondent, or both. All other complaints of potential violations of the Policy will be reviewed in accordance with the [Formal Review Process for Sex Discrimination Complaints](#). These two review processes are also referred to individually as a "Formal Review Process" or collectively as the "Formal Review Processes."¹ Under the Formal Review Processes, NEC will conduct an investigation that gathers sufficient evidence to determine whether Prohibited Conduct occurred.

NEC's Title IX Coordinator should be contacted with any questions about the Policy or Formal Review Processes:

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Once NEC's Title IX Coordinator or designee (the "Title IX Officer") determines that a complaint includes allegations of Prohibited Conduct under the Policy, the Title IX Officer will provide a written notice to all known parties that will include the Title IX Officer's initial determination of which Formal Review Process will apply. This Formal Review Process for Sex-Based Harassment Complaints Involving NEC Students applies to all reports of sex discrimination alleged to have occurred in NEC's educational programs or activities as defined in the Policy.

In accordance with the regulations promulgated by the Department of Education ("DOE") in August 2024 (the "federal Title IX regulations"), this Formal Review Process for Sex-Based Harassment Complaints Involving NEC Students applies to complaints alleging prohibited conduct that occurred on or after August 1, 2024. Reports that involve allegations of Prohibited Conduct that occurred prior to August 1, 2024 will be reviewed in accordance with the most recently updated versions of NEC's Title IX Sexual Misconduct Policy and Gender-Based Misconduct Policy.²

¹ If a complaint includes both allegations of sex-based harassment involving a student complainant or a student respondent and other potential violations of the Policy, this Formal Review Process for Resolution of Sex-Based Harassment Complaints Involving NEC Students shall apply, subject to the Special Situations section of the Policy.

² Reports of prohibited conduct that occurred both before and after August 1, 2024 will be reviewed in accordance with the Policy, including the applicable Formal Review Processes identified in the Policy. Members of the NEC community with questions about which policy and/or Formal Review Process applies should contact the Title IX Coordinator.

II. Investigation of Complaint

- A. 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 investigation findings (the “Investigation Report”).³ The Investigator will be a qualified and trained individual employed by or engaged by the Conservatory for the purpose of conducting investigations under the Policy, and shall have received training on issues relating to sex discrimination and investigatory procedures at NEC within a year of the date that they are designated by NEC to conduct the investigation.

The Title IX Officer will typically provide the Parties with the name of the person(s) assigned to investigate the reported conduct as identified in the notice letter within seven (7) business days of sending the notice of investigation. As soon as possible, but no later than three (3) business days after delivery of the identity of the Investigator, 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.

Subject to the availability of parties and witnesses, as well as relevant documentation, and depending on the scope of the complaint and other relevant factors, NEC expects that investigations will be concluded within ninety (90) days of the designation of the investigators.⁴

- B. Nature of the Investigation.** The Investigator retains discretion to determine how to conduct the investigation and what information is necessary and relevant. The investigation provides an opportunity for fact-finding and, to the extent possible, will include separate interviews with the Complainant, Respondent, and any relevant witnesses. The Investigator will provide the Parties with advance written notice of meetings at which their presence is required, including information about the date, time, location, participants, and purpose of all meetings with sufficient time for the party to prepare to participate. Although formal rules of evidence will not apply, the investigator will not consider Impermissible Evidence as defined by the Policy. The investigation will be objective, thorough, impartial, and fair, and all individuals will be treated with appropriate sensitivity and respect. The investigator will review and consider both inculpatory (*i.e.*, proving the responsibility of a party) or exculpatory (*i.e.*, proving that a party did not commit the conduct alleged) evidence. Credibility

³ All references to the “investigator” in this Formal Review Process should be read to include “investigators” in the event that NEC designates more than one investigator to conduct the investigation of the formal complaint.

⁴ This 90 day period is exclusive of the time needed to prepare the Investigation Report.

determinations will not be based on a person's status as a complainant, respondent, or witness. The parties will not be interviewed together or be required to meet during the investigation.

- C. The Parties' Identification of Potential Witness and Documentation.** The Parties have the opportunity, and are expected, to provide the Investigators with: (i) the identification of potential witnesses who have specific information relevant to the complaint and with whom they would like the Investigator to speak; and (ii) any documentation or other items or questions they would like to be considered as part of the investigator's review. The Parties can provide both inculpatory and exculpatory evidence that is relevant and not otherwise impermissible. This information must be provided to the Investigator during the Investigation and without delay upon becoming aware of it. The Conservatory reserves the right to limit the submission of evidence and information that was within the party's possession or knowledge during the Investigation if the Conservatory determines that the information was withheld for strategic advantage.

The Parties are also encouraged to provide the Investigator with questions that they would like the Investigator to pose to the other party or witnesses. The Investigator is not obligated to ask these questions, but the Investigator will append the questions requested to be asked by either party to the Investigation Report, as well as a notation as to whether the questions were asked or not.

The Investigator will exercise discretion to determine what information identified by the Parties to consider and which potential witnesses can provide information relevant to the investigation. The Investigator may also review relevant documentation and interview other individuals not specifically identified by a party if the Investigator determines the documentation or interview(s) will provide specific information relevant to the complaint.

III. Investigation Report

- A. Content of the Investigation Report.** At the conclusion of the Investigation, the Investigator will prepare an Investigation Report without findings, which should include a summary of the factual information presented during the Investigation and a separate section where the Investigator points out relevant consistencies or inconsistencies (if any) between all sources of information. Attached to or made available with the Investigation Report, the Investigator will provide any relevant evidence gathered, whether inculpatory or exculpatory. The Investigator will also create a separate appendix of all questions requested to be asked by either party, including who requested the question be asked and whether the question was asked. The Investigation Report will not include a determination as to whether a party has violated the Policy or what sanctions may be appropriate. These determinations will be made at the Determination Hearing. The investigation report will generally be completed within thirty (30) days of the completion of the investigation.

B. Review by the Parties. The Parties will be given an opportunity to review the entire Investigation Report and to submit written comments and/or questions about the content of the Investigation Report to the Investigator within ten (10) calendar days of the date they are notified that the Investigation Report is available for review. The parties will also be able to submit a list of additional questions that they wish to be asked or considered at the Determination Hearing. The review of the Investigation Report will take place at a secure location and in a secure manner determined by the Title IX Officer. Each party's advisor will have access to review the Investigation Report at the same time and in the same manner as the parties, but the Conservatory reserves the right to create appropriate procedures to protect the privacy and sensitivity of the materials in question. Photographs or any other copies of the Investigation Report are not allowed by a party or their advisor. The secure location and manner of reviewing the Investigation Report can be modified if the Title IX Officer deems it necessary and appropriate.

The comments submitted by the Parties may not exceed ten (10) double spaced pages unless the Title IX Officer determines that a higher page limit is necessary and appropriate. This page limit does not include any submission of additional questions a party would like to be considered at the hearing.

After reviewing the submissions, if any, from the Parties, the Investigator 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 by a party constitutes Impermissible Evidence and/or is irrelevant and therefore not to be considered and/or will be redacted, however, all questions a party requests to be asked during the Determination Hearing must be appended to the report. If further investigation is conducted, the Investigator will include any additional relevant information in the Investigation Report.

C. Submission to Title IX Officer. Once the investigation is concluded, the Investigator will provide the Title IX Officer the final Investigation Report, along with appendices including the statements of the Parties and any questions the Parties' requested be posed during the Determination Hearing. The Title IX Officer will transmit the materials to the Determination Officer in accordance with Section IV below.

IV. Determination Hearing

A. Conflicts and Provision of Investigation Report. Within seven business (7) days of receiving the Investigation Report, the Title IX Officer will inform the Parties of the identity of the Determination Officer.⁵ The Determination Officer may be employed by

⁵ The Conservatory will typically identify one individual to serve as the Determination Officer. That individual will preside over hearings and make relevant determinations regarding evidence and the propriety of questions.

the Conservatory or engaged by the Conservatory for the purpose of conducting determination hearings under the Policy and this Formal Review Process. The assigned Determination Officer shall have received training on NEC's policy and serving in this role within one year of the date they are assigned by NEC. The Parties must inform the Title IX Officer in writing of any conflicts of interest in regard to the selected Determination Officer no later than three (3) business days after the Title IX Officer sends the notification of the assigned Determination Officer. If a conflict of interest is raised regarding the individual assigned, the Title IX Officer will consider the nature of the conflict and determine if a different person(s) should be assigned as the Determination Officer. The Title IX Officer may consult with other Conservatory personnel to discuss any conflicts of interest. The Title IX Officer's decision regarding any conflicts is final. Once the process for the Parties to identify a conflict of interest is complete, the Title IX Officer will provide the Determination Officer with the Investigation Report.

- B. Review of Report by the Determination Officer.** The Determination Officer has the authority to accept the Investigation Report without seeking additional investigation, or to ask the Investigator to conduct additional investigation on specific points prior to the Determination Hearing.

If the Determination Officer determines further investigation is required, the Parties will promptly be notified in writing. At the conclusion of the additional investigation, the Parties will be provided with the opportunity to review a written summary of the new information, and to submit written comments and/or questions about the content of the new information to the Investigator within five (5) business days of the date they are notified that the additional information is available for review. This review will take place at a secure location and in a secure manner determined by the Title IX Officer. Each party's advisor will have access to review the additional information at the same time and in the same manner as the Parties, and the Conservatory reserves the right to create appropriate procedures to protect the privacy and sensitivity of the materials in question. Photographs or any other copies of the additional information are not allowed by a party or their advisor. The secure location and manner of reviewing the additional information can be modified if the Title IX Officer deems it necessary and appropriate.

Any comments submitted by the Parties to the additional information may not exceed two (2) double spaced pages unless the Title IX Officer determines that a higher page limit is necessary and appropriate. The Parties will also be able to supplement the list of questions that they wish to be asked or considered at the Determination Hearing. The page limit does not include any supplement of additional questions a party would like to be considered at the Determination Hearing.

However, the Conservatory reserves the right to designate up to three individuals, including internal or external determination officers. All references to the Determination Officer in this Policy should be read to include "Determination Officers" in the event that NEC elects to appoint more than one Determination Officer.

C. Notice of Determination Hearing. After the Determination Officer accepts the final Investigation Report, the Parties will be notified of the date of the Determination Hearing. The Determination Hearing will be scheduled within thirty (30) days of the date the Determination Officer completes their review of the Investigation Report. The Parties will receive copies of policies and/or processes regarding the submission and consideration of evidence that may be used during a hearing at least seven (7) business days before the hearing.

D. Determination Hearing. The following procedures shall apply to the Determination Hearing. These procedures may be updated and additional procedures may apply. In the event of any updates or additional procedures, the parties will be notified promptly.

- i. The Determination Officer will preside over the hearing and make the decision by a preponderance of the evidence as to whether or not the Respondent violated the policy provisions at issue. The Determination Officer has broad authority to determine the process, timing, and conduct of a hearing. For example, the Determination Officer will determine the order of presentation, timing and overall duration of the hearing, what information and evidence will be heard, what information and questions are relevant to the determination of the matter, and what questions posed by a party will or will not be permitted.
- ii. Each party may have an advisor of their choice present at a hearing. Advisors may be, but are not required to be, attorneys. No later than five (5) business days before the hearing, the Parties must inform the Title IX Officer of the identity of any advisor who will accompany them to the Determination Hearing. Advisors may not speak or otherwise communicate on the part of a party during the Determination Hearing. However, the advisor may consult privately in a non-disruptive manner with their advisee during and/or at a recess in the hearing, including with regard to requesting the questions the party wishes for the Determination Officer to ask the other party and/or witnesses. The Conservatory reserves the right to take appropriate action regarding any advisor who the Determination Officer determines disrupts the process and/or who does not abide by the restrictions on their participation, which may include exclusion of the advisor from the hearing and the appointment of an alternate Conservatory-provided advisor.
- iii. The Determination Officer will lead questioning of the Parties and witnesses and make credibility determinations at the Determination Hearing. The Determination Officer shall not consider Impermissible Evidence as defined by the Policy.
- iv. At a time and manner during the Determination Hearing deemed appropriate by the Determination Officer, the Determination Officer will also elicit

questions the Parties wish to ask, which may include questions identified by the Parties prior to the hearing as set forth in Sections IV.A and IV.B above. The Determination Officer will determine if the questions requested by a party are relevant and appropriate, and, if so, will pose them. The Determination Officer may also determine the questions seek Impermissible Evidence as defined in the Policy, and/or are not relevant, unclear, or have already been asked. The Determination Officer will explain any decision to exclude a question. The Determination Officer shall give a party an opportunity to clarify or revise a question that the Determination Officer has determined is unclear or harassing and, if the party sufficiently clarifies or revises a question so that it is no longer unclear or harassing, the Determination Officer shall ask the question. NEC and/or the Determination Officer may also adopt and apply other reasonable rules regarding decorum and the conduct of the Determination Hearing. The Conservatory shall endeavor to provide notice of all such rules prior to the Determination. However, there may be instances in which advance notice is not practicable due to unanticipated conduct. In those cases, the reasonable rule may be applied as long as it is applied to both parties equally.

- v. The Conservatory will provide for the hearing to occur virtually with the Parties located in separate rooms and/or locations with technology enabling the Determination Officer and Parties to simultaneously see and hear the party answering questions.
- vi. If a party does not appear and submit to examination at the hearing, the Determination Officer may consider the party's prior statements as allowed by current federal guidance and/or federal case law in Massachusetts in effect at the time of the hearing, such as statements made during the investigation (for example, as set forth in the Investigation Report), emails, or text messages, or other statements that are deemed relevant consistent with Title IX regulations. The Determination Officer will not draw an inference about a determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross-examination or other questions. A party's non-participation in the process could have a substantial impact on the outcome; the Determination Officer may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible.
- vii. The Conservatory will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review. It will not be provided for distribution and the Conservatory will provide the same protective measures as used in Part III.B. of this Formal Review Process regarding review of investigation reports.

- E. Determination of Responsibility and Sanctions.** The Determination Officer will notify the Title IX Coordinator of their decision as to whether or not the Respondent is responsible based on the preponderance of the evidence for engaging in Prohibited Conduct under the Policy and/or for any other NEC potential policy violations that have been consolidated for review under this Formal Review Process pursuant to the Policy. The Determination Officer shall reach this determination based on an objective evaluation of all evidence that is relevant and not otherwise impermissible, including both inculpatory and exculpatory evidence. Credibility determinations shall not be based on a person's status as a complainant, respondent, or witness. If the Determination Officer determines that a party is responsible for violating this Policy, they will also determine Sanctions. The Determination Officer will then consult with relevant administrators to determine sanctions as follows:
- Student Respondent: Determination Officer will consult with the Title IX Officer and the Dean of Students and Campus Life or their designee.
- Staff Respondent: Determination Officer will consult with the Title IX Officer, the Vice President for Human Resources or their designee, and the appropriate manager and/or member of the senior leadership team.
- Faculty Respondent: Determination Officer will consult with the Title Officer, the Vice President for Human Resources or their designee, and the Chief Academic Officer or their designee.

In each case, additional administrators may be consulted concerning appropriate sanctions if deemed necessary by the Determination Officer based on the facts and circumstances. The Determination Officer may request from the Conservatory information on prior sanctioning decisions so that they can evaluate whether a consistent sanction is appropriate in the matter at hand.

- F. Written Notification of Determination.** The Parties will typically be notified in writing of the decision and, if appropriate, the sanctions applied, within seven (7) business days of the Determination Hearing. The written notice of the determination shall be provided simultaneously to both parties, and will include the following: (i) a description of the alleged violations of the Policy and/or any other NEC policies; (ii) information about the policies and procedures that NEC used to evaluate the allegations; (iii) the Determination Officer's evaluation of the relevant and not otherwise impermissible evidence and determination whether the preponderance of the evidence indicates that the Respondent is responsible for the violations of NEC policy alleged in the complaint; (iv) if there is a determination that NEC policy was violated, any disciplinary sanctions that will be imposed on the Respondent, and whether remedies other than the imposition of disciplinary sanctions will be provided by NEC to the Complainant, and, to the extent appropriate, other students identified by the Determination Officer and/or NEC to be experiencing the effects of sex-based harassment; and (v) the procedures for the Complainant and Respondent to appeal.

V. Appeals

A party may appeal in accordance with the process identified in Section V of the [Policy Against Sex Discrimination](#).

VI. Additional Considerations

The Additional Considerations section of the [Policy Against Sex Discrimination](#) is incorporated into this Formal Review Process in full. Please refer to the Policy Against Sex Discrimination for additional information.

VII. Definitions.

The definitions in the [Policy Against Sex Discrimination](#) are incorporated into this Formal Review Process in full. Please refer to the Policy Against Sex Discrimination for definitions of relevant terms.

VIII. Informal Resolution.

Any time after a report is made to the Title IX Officer, including before or after a formal complaint is submitted or after referral to this Formal Review Process, a party may request that the report be resolved through informal resolution rather than a Formal Review Process. Please refer to the [Policy Against Sex Discrimination](#) for additional information.

Policy Last Updated July 31, 2024