

New England Conservatory Policy Against Sex Discrimination

I. INSTITUTIONAL VALUES, PURPOSE, AND SCOPE OF POLICY

This Policy Against Sex Discrimination (the “Policy”) implements New England Conservatory’s (NEC or the Conservatory) prohibition on sex discrimination, including, without limitation sex-based harassment and other forms of sexual misconduct. Discrimination on the basis of sex includes discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, gender identity or expression, and marital, family, or parental status. Conduct prohibited by this Policy is described in Section VI below.

This Policy applies to all reports of sex discrimination alleged to have occurred in NEC’s educational programs or activities. For the purposes of this Policy, conduct that occurs under NEC’s education program or activity includes, but is not limited to, conduct that is subject to the NEC’s disciplinary authority. In accordance with applicable federal regulations, NEC will address a report of a sex-based hostile environment occurring in its educational programs or activities even when some conduct alleged to be contributing to the hostile environment occurred outside NEC’s education program or activity or outside the United States. The Policy is intended to ensure a safe and non-discriminatory educational and work environment and to meet legal requirements, including: Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in the University’s programs or activities; relevant sections of the Violence Against Women Reauthorization Act (VAWA); Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of sex in employment; and Massachusetts laws that prohibit discrimination on the basis of sex, sexual orientation, and gender identity. It does not preclude application or enforcement of other NEC policies.

In accordance with the regulations promulgated by the Department of Education (“DOE”) in August 2024 (the “federal Title IX regulations”), this Policy identifies the two Formal Review Processes that apply to complaints of conduct prohibited by this Policy and applies to all members of the NEC community. Reports that involve 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. Reports of prohibited conduct that occurred both before and after August 1, 2024 will be reviewed in accordance with this Policy, including the applicable Formal Review Processes identified in this Policy. Members of the NEC community with questions about which policy applies should contact [the Title IX Coordinator](#).

If there is a determination under the Formal Review Processes that sex discrimination occurred, the Title IX Coordinator shall coordinate the provision and implementation of remedies to a Complainant and other individuals identified as having had equal access to NEC’s education programs or activities limited or denied by sex discrimination, and coordinate the imposition of any disciplinary sanctions on a Respondent, including notification to the Complainant of any such disciplinary sanctions as provided in the Formal Review Processes, and take other

appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within NEC's education program or activity.

NEC will not impose discipline on a Respondent for sex discrimination or other conduct prohibited by this Policy unless there is a determination at the conclusion of the applicable review process that the Respondent engaged in prohibited conduct. Violations of this Policy may result in the imposition of sanctions ranging from an admonition or warning, educational requirements, loss of leadership or privilege, loss of ability to take part in a group or extra-curricular activity, up to and including, suspension, termination, dismissal, or expulsion. The remedies designed to restore or preserve equal access to NEC's programs or activities may range from course-related adjustments and no-contact orders to restrictions on access to campus, campus locations, or campus activities. Retaliation against an individual for making a report or complaint of sexual harassment, or for participating or refusing to participate in any proceeding regarding such a complaint, or for opposing discriminatory practices is prohibited.

II. REPORTING PROHIBITED CONDUCT

Reporting to the Title IX Coordinator: Allegations of sex discrimination involving any member of the NEC community, regardless of where it occurred, should be reported to the Title IX Coordinator:

Katrina Chapman, Title IX Coordinator

Katrina.Chapman@necmusic.edu

Tel: 617-585-1299

NEC encourages community members who have experienced and/or observed any potential sexual discrimination to inform the Title IX Coordinator. The Title IX Coordinator can then offer to the impacted individual appropriate supportive measures, as well as information regarding resources, available reporting options, the applicable Formal Review Process, and the availability of informal resolution.¹ All employees, unless they are designated as confidential resources and are acting within the scope of their confidential job duties, must report information about conduct that reasonably may constitute sex discrimination to the Title IX Coordinator.

Anonymous Reporting: NEC can address reports of violations of this Policy most completely when the Conservatory is able to identify and communicate with the individuals reporting policy violations. The benefits of direct reporting include a greater ability for NEC to follow-up on the information in the report and to provide resources, support, and options to those reporting. However, NEC also provides individuals with the option to submit an anonymous report without disclosing their identity or the identity of others or requesting any action.

- Individuals may submit an anonymous report through EthicsPoint, a third-party service party that permits the submitter to submit an anonymous report and to exchange

¹ Reports of prohibited conduct that involve the Title IX Coordinator should be submitted to NEC's Vice President for Human Resources or their designee (the "VP for HR").

anonymous messages with NEC's Title IX Coordinator. EthicsPoint can be accessed at this link: <https://secure.ethicspoint.com/domain/media/en/gui/61839/index.html>.

- Those wishing to submit a report anonymously may also submit the online form titled Reporting Violations of NEC's Policy Against Sex Discrimination (<https://necmusic.edu/policies/report-a-problem/>) without personal identifying information.

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

III. CONFIDENTIAL RESOURCES

NEC recognizes there are individual and societal barriers to reporting and not every individual who experiences sex discrimination, including, without limitation, sex-based harassment or sexual misconduct, will choose to report to NEC. The Conservatory offers confidential resources for those individuals who are seeking support and information about their options, but who are not ready to, or do not want to, report the situation to the Title IX Coordinator or to another NEC employee who is required to share information with NEC's Title IX Coordinator. Discussing sexual misconduct with a confidential resource will also not result in a report to law enforcement, state agency, or other relevant third parties unless the report concerns abuse of minors (under the age of 18), abuse by a caregiver, an individual is at risk of imminent harm to self or others (e.g. homicidal ideation or suicidal ideation), in which case notification, including to law enforcement or a state agency, may be required. A Confidential Resource may also be required to provide testimony in response to a subpoena or court order.

NEC Confidential Resource (Students and Employees) -

NEC has designated the following individual as a confidential resource under this Policy: Monique Van Willingham, Director of Cultural Equity and Belonging
monique.vanwillingham@necmusic.edu; 617-585-1749

NEC students and employees also may access confidential counseling services:

NEC Counseling Center (Students): The Counseling Center provides students with access to non-emergency medical care and/or counseling appointments. The Counseling Center can be contacted at 617-585-1284. The counselors of the Counseling Center are bound by professionally and legally recognized confidentiality requirements that prohibit the release of information without an individual's express written consent except as required by law.

Employee Assistance Program (Employees): Staff and faculty can access referrals to medical, counseling, and additional forms of support through NEC's confidential third-party Employee Assistance Program (EAP), *Employee Connect*, by calling 1-888-628-4824 or by visiting www.GuidanceResources.com. Additional information on

Employee Connect is posted on ADP. Employees can also contact Human Resources with any questions about the EAP.

Additional information about confidential resources, including external organizations that provide confidential services, as well as information on other resources is available here: [Resources for Members of the NEC Community Impacted by Sex Discrimination](#).

IV. INITIAL REVIEW OF REPORTS; SUPPORTIVE MEASURES; AND REFERRAL OF COMPLAINTS TO FORMAL REVIEW PROCESS

1. Initial Review of Reports

After receiving a report of conduct that could implicate this Policy, the Title IX Coordinator, or their designee (the “Title IX Officer”), will take a number of initial steps; these initial steps are not an investigation. Rather, these initial steps will enable NEC to assess the need to take any immediate action to address the safety and health needs of the parties involved in a matter and to help the parties determine the next appropriate steps, whether under this Policy or a referral to another NEC policy. These initial steps may include, but are not limited to, the following:

- A. The Title IX Officer will contact the Complainant (if known) and encourage them to meet virtually or in person to discuss the nature and circumstances of the report and describe the various options available to them.
- B. Regardless of whether a Complainant decides to submit a complaint and participate in a Formal Review Process, they may be entitled to supportive measures as discussed in Part IV.2 below.
- C. The Title IX Officer will review the processes, options (including Informal Resolution options if appropriate), and protections in this Policy and the applicable Formal Review Process. The Title IX Officer will also explain the right to submit a complaint and the right to delay or decline to submit a complaint to NEC. Depending on the nature of the report, the Title IX Officer may also advise the Complainant of the option to report to local law enforcement. Such a report will not change any obligation of NEC to investigate the matter, but it may briefly delay the timing of the investigation, including, without limitation, if a law enforcement agency requests that NEC delay its process for a reasonable amount of time to allow it to gather evidence of criminal conduct. NEC does not use the same process or standard of proof as a criminal process. Typically, NEC will only inquire about criminal processes if they impact an individual’s ability to use NEC’s process. In no instance will a concurrent criminal proceeding, by itself, lead to an adverse inference against the Respondent.

In appropriate circumstances, to address imminent and serious threats posed to any person's health or safety as a result of the allegations in a report and/or complaint, or to address a risk to the larger NEC community, NEC may evaluate whether to remove a Respondent from its Education Program and Activities on an emergency basis.

Emergency Removal. NEC may remove a student from its Education Program or Activity on an emergency basis following an individualized safety and risk analysis that determines there is an immediate threat to the health or safety of any students, employees, or other individuals arising from a report and/or complaint including allegations of Prohibited Conduct. The removed party shall have notice and an opportunity to challenge the decision immediately following the removal. If this step is taken, the individual will be provided with an option to take part in NEC's review of the report and/or complaint, including any Formal Review Process.

Administrative Leave. NEC may place an employee on leave during its review of a report and/or complaint including allegations of Prohibited Conduct, including during the applicable Formal Review Process.

2. Supportive Measures

Supportive Measures are non-disciplinary, non-punitive individualized services, offered as appropriate, as reasonably available, and without fee or charge to either the Complainant or the Respondent before or after the submission of a complaint or where no formal complaint has been submitted. Supportive measures are designed to restore or preserve equal access to the Conservatory's educational programs or activities, to protect the safety of the Parties or NEC's educational environment, or to provide support during NEC's review of a report, including the applicable Formal Review Process and/or informal resolution process. Supportive measures will not 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; one way or 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, without limitation, 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 on-campus housing, 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.

The Title IX Officer will evaluate requests for supportive measures and decide whether to provide, deny, modify, or terminate the supportive measures applicable to the Parties. If the Complainant or Respondent is a student with a disability, the Title IX Officer may consult, as appropriate, with Disability Support Services or other NEC office designated to provide support to students with disabilities, in the implementation of supportive measures.

Either Party may seek review of the Title IX Officer's decision as to supportive measures applicable to them:

- a. Students may seek review by the Dean of Students and Campus Life, or designee.
- b. Employees may seek review by the Vice President for Human Resources, or designee.

A party may seek additional modification or termination of a supportive measure applicable to them if circumstances change materially. NEC will not disclose information about any supportive measures to individuals other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to NEC's education program or activity, or as permitted by law or regulation. NEC may, as appropriate, modify or terminate supportive measures at the conclusion of the review of a complaint, whether through a Formal Review Process or informal resolution, or may continue them beyond that point.

3. Submitting a Complaint

Complaints may be made by: (1) any student or employee; (2) any person other than a student or employee who was participating or attempting to participate in NEC's education program or activity at the time of the alleged sex discrimination; (3) a parent, guardian, or other legal representative with the legal right to act on behalf of a student or any person other than a student who was participating or attempting to participate in NEC's education program or activity at the time of the alleged sex discrimination (collectively referred to as a "Complainant").

A complaint is an oral or written request to NEC that objectively can be understood as a request to investigate and make a determination about alleged conduct prohibited by the Policy (the "Prohibited Conduct" identified in Section VI below). While the complaint is not required to be in writing, the Title IX Officer will typically reduce it to writing and provide the opportunity for the Complainant to review it and affirm it is accurate. A Complainant may submit a complaint in any of the following ways:

- a. By delivering, mailing, or otherwise transmitting the formal complaint to the Title IX Coordinator (orally or in writing);
- b. By emailing the formal complaint to katrina.chapman@necmusic.edu;
- c. By completing a [Title IX and Gender-Based Misconduct Reporting Form](#); or

- d. Through any other means that results in the Title IX Coordinator receiving the person's complaint.

4. NEC Initiation of Complaint

If the Title IX Officer determines that a report may allege Prohibited Conduct by a Respondent but no complaint has been submitted and/or a Complainant declines to submit a complaint or withdraws any or all of the allegations in the complaint, the Title IX Officer will determine whether to initiate a complaint against a party under the applicable Formal Review Process. To make this determination, the Title IX Officer will consider, without limitation, the following factors if applicable:

- (1) the Complainant's request not to proceed with initiation of a complaint;
- (2) the Complainant's reasonable safety concerns regarding initiation of a complaint;
- (3) the risk that additional acts of sex discrimination would occur if a complaint is not initiated;
- (4) the severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- (5) the age and relationship of the parties, including whether the Respondent is an NEC employee;
- (6) the scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;
- (7) the availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred; and
- (8) whether NEC could end the alleged sex discrimination and prevent its recurrence without initiating the Formal Review Processes.

If, after considering the above and other relevant factors, the Title IX Officer determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents NEC from ensuring equal access on the basis of sex to its education program or activity, the Title IX Officer may initiate a complaint. In such situations, the Title IX Officer will notify the Complainant prior to doing so and appropriately address reasonable concerns about the complainant's safety or the safety of others, including by providing Supportive Measures.

If the Title IX Officer initiates a complaint, NEC is not a party and will provide notice, as set forth below, to both the Complainant and Respondent. The Complainant shall have all the same rights to participate in the review of the complaint as they would if they submitted the complaint.

5. Initial Notice

Once the Title IX Officer determines that a complaint implicates the Policy, as set forth in sections IV(1-4), the Title IX Officer will provide a written notice to all known parties that will

include: a description of the allegations as they are understood at the time, including, to the extent known the name(s) of the parties, the date, time, 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; a statement that the Respondent is presumed not responsible for the alleged conduct; a statement that retaliation is prohibited; a statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence obtained during the investigation, including the Investigation Report; the Title IX Officer's initial determination of which Formal Review Process will apply and information on how to review the Formal Review Process; and information on the availability of the informal resolution process. When the complaint will be referred for review under the Formal Review Process for Sex-Based Harassment Complaints Involving NEC Students, the written notice will also: notify the Parties that they will have an opportunity to present relevant and not other impermissible evidence to a trained, impartial Determination Officer at a Determination Hearing; that they may have an advisor of their choice who may, but is not required to be, an attorney accompany them to the Determination Hearing; and that NEC prohibits knowingly making false statements or knowingly submitting false information during the Formal Review Process for Sex-Based Harassment Complaints Involving NEC Students.

The Title IX Officer will provide the written notice promptly after receiving a complaint, and with sufficient time to prepare for any interview or meeting. The written notice does not constitute a finding or a determination of responsibility. The written notice will be updated or amended if new allegations are raised by either party and accepted for investigation. To the extent NEC has reasonable concerns for the safety of any person as a result of providing this notice, the Conservatory may reasonably delay providing written notice of the allegations in order to address the safety concern appropriately. Reasonable concerns will be based on individualized safety and risk analysis.

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

When a sex discrimination complaint alleges that NEC's policy or practice discriminates on the basis of sex, NEC is not considered a Respondent. In those circumstances, the Complainant will typically receive written notice within seven (7) business days' submission of the complaint of the review process that will apply.

NEC may consolidate complaints of sex discrimination against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances. If one of the complaints to be consolidated is a complaint of sex-based harassment involving a

student complainant or student respondent, the Formal Review Process for Sex-Based Harassment Complaints Involving NEC Students will apply. When more than one complainant or more than one respondent is involved, references in this Policy and/or the Formal Review Process section include the plural, as applicable.

6. Dismissal of Complaint

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

- The complaint does not allege Prohibited Conduct. Prior to dismissing the complaint for this reason, the Title IX Officer shall make reasonable efforts to clarify the allegations with the Complainant. Any allegation in a complaint that does not constitute Prohibited Conduct or does not fall within the scope and jurisdiction of this Policy, may be addressed through another NEC policy.
- The Complainant notifies the Title IX Officer that they wish to voluntarily withdraw the complaint or any allegation(s) contained in the complaint, the Title IX Officer declines to initiate a complaint, and NEC determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute Prohibited Conduct even if established by a preponderance of the evidence during the applicable Formal Review Process. In cases where the complaint alleges sex-based harassment where an NEC student is a Complainant or a Respondent, the Complainant's voluntarily withdrawal of the complaint, or any allegations in the complaint, must be in writing.
- NEC is unable to identify the Respondent after taking reasonable steps to do so.
- The Respondent is not participating in NEC's education program or activity and is not employed by NEC.

If a complaint is dismissed under this section, the Title IX Officer will provide a written Notice of Dismissal to the Complainant, including the basis for the dismissal, and information regarding how to appeal the decision. If the dismissal occurs after the Respondent has been notified of the allegations, the Title IX Officer will also simultaneously provide a written Notice of Dismissal to the Respondent, including the basis for the dismissal and information regarding how the Complainant can appeal the decision. The appeal will follow the process identified in the applicable Formal Review Process based on the allegations in the complaint.

If a complaint alleging sex-based harassment is dismissed under this section, the Complainant will be offered supportive measures as appropriate and the Respondent will also be offered supportive measures as appropriate provided that the Respondent can be identified and is a student or employee of NEC.

7. Referral to Applicable Formal Review Process

Complaints alleging violations of this Policy will follow the [Formal Review Process for Sex Discrimination Complaints](#), with the exception that complaints alleging sex-based harassment that involve either a student complainant or a student respondent, or both, will be reviewed in accordance with the [Formal Review Process for Sex-Based Harassment Complaints Involving NEC Students](#). These two processes are also referred to in this Policy as a Formal Review Process or the Formal Review Processes.

When a Complainant or Respondent is both a student and an employee, the Title IX Officer will make an individualized determination as to which Formal Review Process applies based on the relevant facts, including whether the Party's primary relationship with NEC is to receive an education and whether the alleged sex-based harassment occurred while the party was performing employment-related work.

If a complaint includes both allegations of sex-based harassment involving a student complainant or a student respondent and other potential violations of this Policy, the [Formal Review Process for Sex-Based Harassment Complaints Involving NEC Students](#) shall apply.

8. Right to Advisor or Support Person

Each party may have a single advisor or support person of their choice present during any meeting held pursuant to the Policy and/or during any meeting, interview, or hearing, or related formal disciplinary proceeding held during a Formal Review Process, which may include an attorney. A party may consult with their advisor during any meeting, interview, or hearing held under this Policy or a Formal Review Process. Advisors cannot speak for the party they represent at a meeting or interview. NEC staff and internal/external personnel involved in a meeting, interview, or hearing, held pursuant to the Policy and/or a Formal Review Process, may delay or terminate interviews or meetings, remove or dismiss advisors, and/or proceed with the investigation if an advisor is disruptive or otherwise refuses to comply with the requirements of this Policy and/or the applicable Formal Review Process. An advisor is subject to the same confidentiality expectations applicable to others in attendance. Accommodations, including scheduling of interviews or reviews, generally will not be made for any advisors if they unduly delay the process. An advisor is not permitted to attend a meeting, interview, or other proceeding without the party they are advising unless they receive the advance approval of the Title IX Officer. NEC reserves the right to take appropriate action in response to any advisor who disrupts the review process or who does not abide by rules and protocols regarding their participation, including, without limitation to protocols identified in this Policy and/or the protocols of the applicable Formal Review Process.

Any person serving as a party's advisor is prohibited from publicly disclosing private information learned during meetings or disciplinary proceedings held under this Policy or the applicable Formal Review Process, including information protected under the Family Educational Rights and Privacy Act ("FERPA") or other laws. Advisors are expected to maintain the privacy of all

parties and witnesses to the greatest extent possible. If any advisor is concerned about violating this assurance of privacy to gather evidence, they should raise such concerns with the Title IX Officer immediately so that it can be appropriately addressed to protect the sensitivity of the information without limiting the ability of either party to find and present relevant evidence.

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

V. APPEALS

A. **Scope.** The Parties may appeal: (i) a decision to dismiss the complaint; and/or (ii) the final determination by the Investigator or Determination Officer under the applicable Formal Review Process as to whether a Respondent is responsible based on the preponderance of the evidence for violating NEC policies. Any appeals must be submitted to the Title IX Officer in writing within five (5) calendar days of the delivery of the applicable decision. A party may only appeal on the following grounds:

- Procedural errors that would change and/or materially impact the outcome. The appeal must state the exact procedural error, when it occurred, and how it would materially impact the outcome.
- New evidence that was not reasonably available at the time of the dismissal or determination of responsibility and which would have changed the outcome and/or sanction imposed (if applicable) had it been available. The appeal must identify the new evidence and explain why it was not previously available. The appeal must also explain how it would have changed the outcome and/or sanction (if applicable).
- Bias or a conflict of interest of bias for or against complainants or respondents generally or the individual Complainant or Respondent with regard to the Title IX Officer, Investigator, Determination Officer, or other person employed/engaged by NEC to conduct the review of the complaint that would change the outcome and/or the sanction (if applicable).

B. **Content of Appeal.** The party submitting the appeal must set forth in writing 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. The non-appealing party may provide a written response within five (5) business days of the date the Title IX Officer delivers the copy of the appeal to them.

- C. **Designation of Appellate Officer(s).** The Title IX Officer will provide both parties with the names of the Appellate Officer within five (5) business days of receiving the appeal.² The Appellate Officer may be an NEC employee or be engaged by the Conservatory for the purpose of conducting appellate review under the Policy and/or this Formal Review Process. As soon as possible, but no later than three (3) business days after delivery of the identity of the Appellate Officer, the Parties should inform the Title IX Officer in writing of any conflicts of interest regarding the assigned Appellate Officer. The Title IX Officer will consider the nature of the conflict and determine if different individual(s) should be assigned to review the appeal. This decision regarding any conflicts is final.
- D. **Applicability of Sanctions During Appeal.** Sanctions of all types may be imposed while an appeal is pending at the sole discretion of the Conservatory. Supportive measures may also be continued during this time period.
- E. **Notice of Appeal Decision.** The Appellate Officer will review the appeal submission and any response submitted by the other Party. The Appellate Officer may also review additional information as deemed relevant and appropriate in the Appellate Officer's discretion, including, without limitation, the Investigation Report and related documentation, submissions by the Parties, the recording of the Determination Hearing (if applicable), and communications relevant to the review, investigation process, and Determination Hearing (if applicable). The Appellate Officer may also speak to relevant NEC administrators or other parties as part of the review. Within fourteen (14) days of receiving the appeal submission or any response submitted by the other Party (whichever is later), the Appellate Officer will notify the Parties of the decision on appeal. The Appellate Officer's decision is final.

VI. PROHIBITED CONDUCT

The following conduct is prohibited by this Policy.

Sex Discrimination

No member of the NEC community shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any of NEC's academic, extracurricular, research, occupational training, or other Conservatory educational program or activity. Sex discrimination may include, without limitation, discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, or gender identity. Sex discrimination may be a separate charge of prohibited conduct and/or may include the following defined terms under this policy: discrimination on the basis of parental, family, or marital status, or pregnancy or related condition; sex-based harassment; or sexual assault.

² NEC reserves the right to designate up to three individuals to review the appeal. The decision to appoint more than one Appellate Officer will be made based on the individual claims and the specific challenges raised on appeal. All references to the Appellate Officer in this Policy should be read to include "Appellate Officers" in the event that NEC elects to appoint more than one Appellate Officer.

Discrimination on the Basis of Parental, Family, or Marital Status or Pregnancy or Related Conditions

Discrimination in an NEC program or activity based on current, potential, or past pregnancy or related conditions. Discrimination does not include voluntary participation in a separate portion of a program or activity provided that the separate portion is comparable to that offered to those who are not pregnant and do not have related conditions.

Sex-Based Harassment

Sex-based harassment is a form of sex discrimination. It includes sexual harassment and other harassment on the basis of sex that:

- 1) Conditions the provision of any educational benefit or service under NEC's educational programs or activities explicitly or impliedly on a person's participation in unwelcome sexual conduct ("quid pro quo" sexual harassment); or
- 2) Constitutes unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the Conservatory's educational programs or activities ("hostile environment" sexual harassment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of: (i) the degree to which the conduct affected the complainant's ability to access NEC's education program or activity; (ii) the type, frequency, and duration of the conduct; (iii) the parties' ages roles within NEC's educational programs or activities, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct; (iv) the location of the conduct and the context in which the conduct occurred; and (v) other sex-based harassment in NEC's educational program or activity.

Sex-based Harassment also includes the following specific offenses as defined in this Prohibited Conduct section: sexual assault, dating violence, domestic violence, stalking, sexual exploitation, or intimate partner abuse.

Sex-Based Harassment Specific Offenses:

- **Sexual Assault:** Having or attempting to have sexual intercourse or sexual contact with another individual without consent. This includes sexual intercourse or sexual contact achieved by the use or threat of force or coercion (see definition for "coercion"), where an individual does not consent (see definition for "consent") to the sexual act, or where an individual is incapacitated. Sexual assault includes the following:
 - Penetrating or attempting to penetrate another individual without their consent. This includes vaginal or anal penetration, however slight, with a body part or object, or oral copulation by mouth-to-genital contact.

- Having or attempting to have sexual contact with another individual without consent. Sexual contact includes kissing, touching the intimate parts of another, causing the other to touch one's intimate parts, or disrobing of another without permission. Intimate parts may include the breasts, genitals, buttocks, mouth, or any other part of the body that is touched in a sexual manner.
- **Dating Violence**: Violence committed by a person who is or has been in a social relationship or a romantic or intimate nature with the complainant. The existence of a dating relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.
- **Domestic Violence**: Violence committed by: (i) a current or former spouse or intimate partner of the complainant under the applicable laws of the Commonwealth of Massachusetts, or someone similarly situated to a spouse of the complainant; (ii) a person with whom the complainant shares a child in common; (iii) is cohabitating, or has cohabitation, with the complainant as a spouse or intimate person; or (iv) any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the location in which the crime of violence occurred. Domestic violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- **Stalking**: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for their safety or the safety of others, or (ii) 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. This definition may also consider different activities to satisfy the course of conduct, e.g., physical stalking behaviors and online stalking behaviors. 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.
- **Sexual Exploitation**: An act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any non-legitimate purpose. Examples include, but are not limited to: observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved; non-consensual streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved; prostituting another individual; knowingly exposing another individual to a sexually transmitted disease or virus without

his or her knowledge; and inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

- **Intimate Partner Abuse:** Abusive behavior between those who are in or have been in an intimate or romantic relationship that does not also constitute domestic violence or dating violence. Abusive behavior may be emotional, psychological, physical and/or sexual, including any behavior that one person in an intimate or romantic relationship uses in order to control the other. Intimate partner abuse or violence may be a single act or a pattern of behavior in relationships. Examples include, but are not limited to: acts of violence or physical harm; threats to cause another physical, emotional, or other harm; demeaning or derogatory communications that amount to abusive behavior; preventing contact with family or friends; property damage; threats of violence to one's self, one's sexual or romantic partner, or to the family members or friends of the sexual or romantic partner. Certain other forms of sex-based harassment, retaliation, or violations of other NEC policies such as the prohibition on violence, may all be forms of intimate partner abuse 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 other party.

Retaliation

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

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

VII. STANDARD OF PROOF

Preponderance of the Evidence. The standard of evidence that NEC uses to determine responsibility for violating this Policy and other NEC policies under the Formal Review Processes is the preponderance of the evidence. This means that in reviewing allegations of prohibited conduct under the Review Processes, the totality of the evidence will be considered to determine whether the Respondent is more likely than not to have been responsible for a violation of the Policy.

- The preponderance of the evidence standard is not the standard used for criminal culpability in most jurisdictions and a determination of responsibility under this 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 this Policy, or other Conservatory policies, were not violated. The two procedures are significantly different and use different standards for determining violations.

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 a Formal Resolution Process, a party may request that the report be resolved through informal resolution rather than a Formal Resolution Process. A party should contact the Title IX Officer to request an informal resolution. The informal resolution process is voluntary and is not required by NEC.

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. NEC will not offer or facilitate an informal resolution process to resolve allegations that an employee engaged in sex-based harassment of a minor (a person under the age of 18), or if such a process would conflict with law. The Parties must voluntarily agree in writing to informal resolution for this option to be used. The Title IX Officer will reach a final decision as to whether the matter may be referred for informal resolution and may decline to offer informal resolution despite one or more of the parties' wishes.

Before initiation of the informal resolution process, the Title IX Officer will provide to the Parties a written notice that explains: (i) the allegations as known at the time; (ii) the requirements of the informal resolution process; (iii) that, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the applicable Formal Review Process; (iv) that the parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the parties from initiating or resuming grievance procedures arising from the same allegations; (v) the potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the Parties; (vi) what information about the informal resolution NEC will maintain and whether and how NEC could disclose such information for use in a Formal Review Process if grievance procedures are initiated or resumed; and (vii) the identity of the Conservatory representative or outside service provider who has been designated to facilitate a dialogue with the parties in an attempt to reach a resolution.

The facilitator for the informal resolution process will not be the same person as the investigator or the Determination Officer (if applicable) under the Formal Review Processes and will have received training on how to review reports of sex discrimination and on the rules and practices associated with NEC's informal resolution process and on how to serve impartially,

including by avoiding conflicts of interest and bias. As soon as possible, but no later than three (3) business days after delivery of the written notice, the Parties shall inform the Title IX Officer in writing of any conflicts of interest with regard to the designated facilitator. The Title IX Officer will consider the nature of the conflict and determine if a different individual should be assigned as the facilitator. 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.

The Title IX Officer, in consultation with the facilitator, can end the informal resolution if it becomes unproductive. Either party may withdraw from the informal resolution process at any time before agreeing to a resolution. The informal resolution process will be conducted in accordance with procedures specified by the Title IX Officer and/or the appointed facilitator. Potential terms that may be included in an informal resolution agreement include but are not limited to: (i) restrictions on contact; and (ii) restrictions on the Respondent's participation in one or more of NEC's programs or activities or attendance at specific events, including restrictions NEC could have imposed as remedies or disciplinary sanctions had NEC determined at the conclusion of a Formal Review Process that the Respondent violated the Policy. The matter will be deemed resolved if the Parties expressly agree in writing to an outcome that is acceptable to them, and which is approved by the Title IX Officer. The Title IX Officer may also consult with other appropriate Conservatory administrators in considering whether to approve an informal resolution.

IX. DEFINITIONS

This section provides definitions for certain terms used in this Policy and the Hearing Processes.

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

Complainant: A person who, at the time they submit a formal complaint, is currently participating in, or attempting to participate in, the Conservatory's educational programs or activities as a student or employee and who alleges they experienced prohibited conduct as defined by the Policy. If an individual is a student or employee at another institution and makes an allegation against an individual who is a student or employee at the Conservatory, the Title IX Officer may exercise discretion in signing a complaint for the aggrieved party. In such situations, the parties will be duly noticed in accord with the 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.

Complaint: A complaint is an oral or written request to NEC that objectively can be understood as a request to investigate and make a determination about alleged conduct prohibited by the Policy (the "Prohibited Conduct" identified in Section VI above). While the complaint is not required to be in writing, the Title IX Coordinator will typically reduce it to writing and provide the opportunity to comment on the writing to the individual who made the complaint. In exceptional situations, the Title IX Officer may submit a complaint in place of a Complainant. If

the Title IX Officer submits a complaint, the Title IX Officer is not a party to a matter and the party who has standing to be a Complainant under the Policy shall receive all requisite rights. Similarly, the Respondent will receive the name of the Complainant, written notice as described in this Policy and the applicable Formal Review Process, and all other requisite rights.

Consent and Related Concepts: NEC defines consent and the related concepts as follows:

Consent

- As used in this Policy, 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 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 the inability, temporarily or permanently, to give consent, because an individual is mentally and/or physically helpless, unconscious, or unaware that the sexual activity is occurring. This may or may not be due to alcohol or other drugs (see below).

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

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

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

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

Education 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.

Parties: The Complainant(s) and the Respondent(s). The Parties are also referred to individually as a "party."

Prohibited Conduct: “Prohibited Conduct” refers to all conduct identified in the Prohibited Conduct section of the Policy, as well as to any additional potential violations of other NEC policies being consolidated for investigation in accordance with the provisions of this Policy.

Relevant: 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. Impermissible evidence, e.g. character evidence or privileged reports or conversations are not relevant information. An exception exists in the context of privileged information insofar as the party holding the privilege may waive that privilege in writing.

Respondent: A person who, at the time a complaint is submitted, is currently participating in, or attempting to participate in, the Conservatory’s educational programs or activities as a student or employee and who is alleged to have engaged in conduct that could constitute Prohibited Conduct under the Policy.

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

X. ADDITIONAL CONSIDERATIONS

- A. Disability Accommodations.** The Conservatory is committed to ensuring that all members of the NEC community, as well as all applicants to NEC, have an equal opportunity to participate in an Education Program or Activity. If any person requires an accommodation because of disability to access any part of this process, they may make that request to the Dean of Students and Campus Life or designee (students) or Vice President for Human Resources or designee (employees or other community members). Any requested accommodations will be provided in consultation with the Title IX Officer to evaluate any impact on the rights or protections of any party or witness.
- B. Extensions of Time:** Whenever this Formal Review Process and/or the Policy set forth a deadline and/or period of time to complete a stage of the investigation or review, that time period can be extended for a brief period if the Title IX Officer, or other relevant NEC administrator, concludes that there is good cause for additional time. A party who wishes to request an extension of time must contact the Title IX

Office or their designee. The parties will be notified in writing of any decisions to extend timeframes for good cause, including the reason for the delay. In circumstances where an extension is provided to one party, it will be provided to the other party.

- C. Duty of Honesty.** The Parties and witnesses are obligated to be honest during the course of the entire process set forth in this Policy and the applicable Formal Review Process. Any person who knowingly makes a false statement – either explicitly or by omission – in connection with any part of this Policy and/or the applicable Formal Review Process may be subject to separate disciplinary action. A report by a Complainant or others made in good faith, however, is not considered false merely because the evidence does not ultimately support the allegation of violation of the Policy.
- D. Expectation of Cooperation.** The Parties and witnesses are expected to cooperate with the Title IX Officer and any other personnel charged with implementing the Policy. Any person who knowingly interferes with the actions taken to implement the reporting, investigation, or resolution of matters under the Policy may be subject to separate and/or additional disciplinary action. The Expectation of Cooperation does not apply to an individual’s decision not to take part in this process out of consideration of constitutional rights in a criminal investigation involving the same or similar facts and circumstances.
- E. Amnesty.** To encourage students to refer incidents involving possible violations of this Policy or safety concerns, NEC generally will extend amnesty for drug and alcohol policy violations to students who report alleged Prohibited Conduct, who participate in an investigation process, or who are helping someone to obtain support related to alcohol or drug consumption or to sexual misconduct or harassment. NEC may review the appropriateness of amnesty if the conduct at issue significantly harmed others or compromised community safety. A student for whom an alcohol or drug violation is waived may be referred for a meeting with an appropriate provider for substance abuse education.
- F. 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 Formal Processes or provisions described in this Policy when the safety of the Conservatory community is at risk, if there are extenuating circumstances involving either of the Parties, or if the Title IX Officer, in consultation with appropriate administrators, determines it is in the best interest of the Conservatory and/or the Conservatory community to do so. If the Conservatory alters the process set forth in this Policy, it will contemporaneously communicate changes to the parties. The Conservatory also reserves the right to update the definitions in this Policy, including definitions of Prohibited Conduct, to create more clarity for our community and/or in response to changes in state and federal laws. If

an updated definition changes any of the Prohibited Conduct, the Conservatory will communicate that to the parties of any pending proceeding.

- G. Delegation.** Where the Title IX Coordinator or any other NEC official or employee is listed as the designated point of contact for any role in the Policy, the Title IX Coordinator may designate another qualified member of the Conservatory community or an external actor to assume the role at issue, as necessary and appropriate, provided there are no conflicts of interest.
- H. Withdrawal, Leave of Absence, or Inactive Status While Charges Are Pending.** If a Complainant withdraws from NEC or leave's NEC's employment, NEC will review the applicable standing requirements and guidance set forth by the U.S. Department of Education and/or other federal and state agencies to determine whether the matter may proceed. Should a student Respondent withdraw, take a leave of absence, or go on inactive status from NEC while charges are pending, the investigative process will typically proceed in the student's absence to a reasonable resolution absent exceptional circumstances as determined by the Title IX Coordinator. The student will not be permitted to enroll in an NEC program unless all sanctions have been satisfied. The student Respondent's academic transcript will have a notation of a pending review under this Policy until the allegations have been resolved. Should an employee Respondent decide to resign or take a leave from NEC while charges are pending, the investigation process will typically proceed in the employee's absence to a reasonable resolution absent exceptional circumstances as determined by the Title IX Coordinator. The employee will not be eligible for employment with NEC unless all sanctions have been satisfied.
- I. Respect for Privacy.** NEC values the privacy of individuals involved in the reporting, investigation, and/or resolution of matters subject to the Policy. NEC will not disclose the identity of the Complainant and Respondent, except as necessary to carry out the processes and obligations under this Policy or as permitted under state or federal law. There are situations in which it may be necessary for the Conservatory to override a request for privacy or confidentiality in order to meet its obligations under law or to seek to ensure the safety of the NEC community. 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.
- J. Impermissible Evidence.** Although formal rules of evidence will not apply to the Formal Review Processes, the investigator and/or Determination Officer (if applicable) assigned to review a complaint under the Formal Review Processes will not consider: (i) character evidence; (ii) incidents not directly related to the potential violations of the Policy unless they tend to show a pattern; or (iii) the past sexual history of either party, unless such information is determined to be highly relevant

by the Investigator;³ (iv) information protected under a legally recognized privilege or provided to a confidential employee or other third party designated as a confidential resource under the Policy unless the person holding the privilege has waived the privilege (*e.g.*, privileged communications between a party and their attorney); or (v) a party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless that party or witness provides their voluntary, written consent for use in the investigation and/or Determination Hearing (if applicable). Parts (i) to (v) are referred to in the Formal Processes as "Impermissible Evidence."

- K. 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 this Policy or of a Formal Review Process. The Title IX Officer may make exceptions to this prohibition in limited circumstances if they conclude that a recording is warranted based upon advance written request of the Party that explains the need for the recording.

- L. Respondent Voluntary Agreement to Policy Violation.** At any point prior to the conclusion of the investigation, a Respondent may agree in writing to the alleged violation(s) of the Policy and may offer a proposed sanction. It is within NEC's sole discretion to accept the admission or the proposed sanction or assign a different sanction.

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³ Examples of circumstances when such information may be relevant may include: (a) when it is offered to prove that someone other than the Respondent is responsible for the prohibited conduct under review, or (b) if information concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and is offered to prove consent to the Prohibited Conduct under review. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the complainant's consent to the alleged Prohibited Conduct or preclude determination that Prohibited Conduct occurred.