

New England Conservatory’s Title IX Policy on Sexual Misconduct

I. INSTITUTIONAL VALUES, PURPOSE AND SCOPE OF POLICY

New England Conservatory (NEC or the “Conservatory”) is committed to maintaining a safe and healthy educational and work environment in which no member of the NEC community is, on the basis of sex, excluded from participation in, denied the benefits of, or subjected to discrimination in any NEC program or activity. Sexual harassment, including sexual violence, is a form of sex discrimination in that it denies an individual equal access to NEC’s programs or activities. This Title IX Policy on Sexual Misconduct (the “Title IX Policy” or this “Policy”) is designed 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 NEC’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.

It is the policy of NEC to provide educational, preventative, and training programs regarding sexual misconduct; to encourage reporting of incidents; to respond promptly and equitably to sexual misconduct in a manner that is not deliberately indifferent; to prevent incidents of sexual misconduct from denying or limiting an individual’s ability to participate in or benefit from NEC’s programs or activities; to offer to the parties supportive measures as appropriate, as reasonably available, and without fee or charge; and to provide prompt and equitable methods of resolution.

Violations of this Policy may result in the imposition of sanctions ranging from an admonition or warning up to, and including, termination, dismissal, or expulsion. The remedies designed to restore or preserve equal access to NEC’s programs or activities may range from course-related adjustments and no contact orders to restrictions on access to campus, campus locations, or campus activities. Retaliation against an individual for making a report or complaint of sexual harassment, or for participating or refusing to participate in any proceeding regarding such a complaint, or for opposing discriminatory practices is prohibited.

This Title IX policy explains the process that will apply to reports of sexual misconduct as defined by the regulations implemented by the Department of Education (“DOE”) and applies to all members of the NEC community.¹ Allegations of sexual misconduct involving any member of

¹ NEC has revised its policies prohibiting sexual misconduct, including this Policy and the Gender-Based Misconduct Policy, in accord with the U.S. Department of Education’s updated guidance that the 2024 federal Title IX regulations were vacated by a federal court in January 2025 and the August 2020 regulations now apply. NEC reserves the right to update its policies prohibiting sexual misconduct, including this Policy and the Gender-Based Misconduct Policy, to comply with future federal and state law changes.

the NEC community, regardless of where it occurred, should be reported to the Title IX Coordinator:

Tracy Kennedy, Title IX Coordinator
titleix@necmusic.edu
Tel: 617-585-1299

Allegations of misconduct that do not meet the definition of sexual misconduct as defined by the federal Title IX regulations (including definitions of prohibited conduct and jurisdictional elements) may be prohibited by other NEC policies, including, but not limited to, NEC's **Gender-Based Misconduct Policy**. Members of the NEC community with questions about whether a report of alleged misconduct falls under this or the Gender-Based Misconduct Policy should contact the Title IX Coordinator.

II. EMERGENCY ASSISTANCE, SUPPORTIVE MEASURES, AND RESOURCES

NEC offers supportive measures and resources to assist NEC students and employees who disclose they have experienced sexual misconduct or other conduct prohibited by this Policy. All of the supportive measures and resources identified in this section are available regardless of whether the NEC student or employee chooses to submit a formal complaint under this Policy or to participate in either an NEC investigation or hearing, or a criminal process.

A. EMERGENCY ASSISTANCE AND SUPPORTIVE MEASURES

Any person who believes they may be at immediate risk of harm should dial 911. NEC also operates a 24-Hour Campus Security and Dispatch, which can be accessed 24 hours a day at 617-585-1777, or extension 1777 from any campus phone.

NEC's Title IX Coordinator is available to assist with providing supportive measures (as defined in the Definitions section of this Policy). Supportive measures may include but are not limited to: counseling; academic accommodations, such as extensions of deadlines or other course-related adjustments; course changes or drops; modifications of work or class schedules; campus escort services; mutual restrictions on contact between the parties; residential accommodations, including but not limited to arranging for new housing, or providing temporary housing options, as appropriate; changes in work locations; leaves of absence; increased security and monitoring of certain areas of the campus; and no trespass notices, among others.

The Title IX Coordinator and/or the Director of Public Safety can provide information concerning the rights of students and employees to notify or decline to notify law enforcement, including local and state police, of a crime (including certain forms of sexual misconduct) and to seek protective orders through the courts if they wish to do so. NEC community members who have obtained a court issued protective order should promptly provide the Title IX Coordinator or

Director of Public Safety with a copy. The Title IX Coordinator or Director of Public Safety should also be notified when such orders are modified, extended, or rescinded.

The Title IX Coordinator can also provide NEC students or employees with information about how to request that NEC Public Safety issue a No Trespass Order prohibiting access to campus to someone with whom they want to avoid contact. A No Trespass Order may be an option if the person with whom they want to avoid contact is not affiliated with NEC and has no right to be on campus – for other situations, a removal from campus would need to meet the standards for emergency removal or administrative leave described in this Policy. The Title IX Coordinator can also review the option the request an NEC-issued No Contact Order (NCO) or No Communication Directive (NCD) between an individual who reports experiencing conduct prohibited by this Policy and the person who is reported to have violated the Policy. In appropriate circumstances, NEC’s Public Safety may be provided with copies of No Contact Orders (NCOs) issued by the Title IX Office.

B. MEDICAL

There are multiple reasons why individuals who have experienced sexual misconduct may seek medical care at different times, such as due to a physical injury, sexually transmitted infection and HIV prophylaxis, concerns regarding pregnancy, and/or for a forensic medical exam to preserve evidence. NEC encourages individuals who have experienced sexual misconduct to seek assistance from a medical provider at any time, if needed. A medical provider can provide routine and emergency medical services, as well as information concerning any health care concerns related to sexual misconduct, in a confidential medical setting.

To collect and preserve physical forensic evidence for potential criminal prosecution, an individual should seek a forensic exam, which is referred to as a Sexual Assault Nurse Examination (SANE). There is a limited window of time (typically 5 days or 120 hours) following a sexual assault to preserve physical and other forms of evidence. Gathering evidence does not commit an individual to any course of action. The decision to gather any evidence and seek medical attention is confidential and may preserve options through the criminal justice system. During a forensic exam, concerns regarding physical injury, risk of pregnancy, and prophylaxis can also be addressed.

Several hospitals within the Boston-area are designated SANE Hospitals, including:

Beth Israel Deaconess Medical Center
330 Brookline Avenue, Boston, MA
1-617-667-7000

Boston Medical Center
Boston Medical Center Place, Boston, MA
1-617-638-6800

Brigham & Women’s Hospital

75 Francis Street, Boston, MA
1-800-294-9999

Massachusetts General Hospital
55 Fruit Street, Boston, MA
1-617-726-2000

Massachusetts law requires medical personnel to report to law enforcement when an individual seeks medical treatment related to sexual assault. This report does not include the patient's name, address, or other identifying information. The report does include a general location of where the assault occurred, if known by medical personnel. For additional information see <https://www.mass.gov/info-details/section-iii-mandatory-reporting#mandated-reporting-for-ma-sanest>.

C. CONFIDENTIAL RESOURCES

NEC recognizes there are individual and societal barriers to reporting and not every individual who experiences sexual misconduct will choose to report to NEC or law enforcement. NEC offers confidential resources for those individuals who are seeking support and do not want to report sexual misconduct to the Title IX Coordinator or to an NEC employee who is required to share information about their report with NEC's Title IX Coordinator.

Students and employees who want to talk to someone at NEC concerning sexual misconduct without making a report to NEC or initiating any action or investigation by NEC may contact confidential resources. Discussing sexual misconduct with a confidential resource will also not result in a report to law enforcement or a state agency, unless the report concerns abuse of minors (under the age of 18), abuse by a caregiver, homicidal ideation, or suicidal ideation, in which case notification, including to law enforcement or a state agency may be required.

The following resources are confidential.

NEC Confidential Resource Providers

NEC has designated the following individuals as confidential resource providers under this Policy, when acting within the scope of their confidential duties. The designated confidential resource providers can provide students and employees with information on how to contact NEC's Title IX Coordinator, how to make a complaint of violations of the Policy and the review process, and provide information on the Title IX Coordinator's ability to offer and coordinate supportive measures.

Confidential Resource Provider for Students

Naomi Robinson, Human Resources Coordinator
naomi.robinson@necmusic.edu
617-585-1276

Confidential Resource Provider for Employees

Monique Van Willingham, Interim Dean of Students and Campus Life
monique.vanwillingham@necmusic.edu; 617-585-1313

Other Confidential Resources

NEC Counseling and Wellness Center (Students): The Counseling and Wellness Center provides students with access to non-emergency medical care and/or counseling appointments with trained and credentialed counselors. The Counseling and Wellness Center can be contacted at 617-585-1284. The counselors of the Counseling and Wellness 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, *Employee Connect*, by calling 1-888-628-4824 or visiting www.GuidanceResources.com. Additional information on *Employee Connect* is posted on ADP. Employees can also contact Human Resources with any questions.

External Confidential Resource - Tufts Medical Center's Collegiate Center for Wellness

(Students): NEC students receive confidential student health services through NEC's partnership with the Tufts Center for Collegiate Wellness. These health services may include, without limitation, urgent care, expedited referrals to specialty care, and after hours resources through telehealth or the Emergency Department. Students can call the Collegiate Center for Wellness at 617-636-6006 to schedule an appointment or to request more information. The phone line's hours of operation are Monday-Friday from 9:00 a.m. to 5:00 p.m. Both in person and telehealth options are available and most appointments are offered same day or within 1 business day. Location: Floating building 3rd floor, Tufts Medical Center; Hours: Monday-Friday, 9am-5pm, <https://medicine.tufts.edu/student-life/wellness/health-mental-health-resource>.

External Confidential Resource - BARCC (Students and Employees): In addition to offering confidential resources through the Counseling and Wellness Center (students) or Employee Assistance Program (employees), the Boston Area Rape Crisis Center (BARCC) offers confidential services to NEC students and employees. BARCC provides advocacy and assistance in working with local police, hospitals, legal services, and campus offices. BARCC advocates are not required to make a report to NEC. Detailed information about BARCC's services, including a 24-hour phone hotline (800-841-8371) and a web chat hotline can be accessed here: <https://barcc.org/information/contact/>.

Off-campus counselors, advocates, and health care providers (such as contacts made through the Employee Assistance Program, BARCC, or the community resources identified in Part D below) will generally maintain confidentiality and not share information with NEC unless the individual requests the disclosure and signs a consent or waiver form. However, there are some circumstances when these providers may have reporting or other obligations under applicable

law, including, without limitation: making reports to governmental agencies in situations involving minors; a requirement to provide testimony in response to a subpoena or court order if the relationship is not privileged; or notifying relevant parties when an individual is at risk of imminent harm to self or others. (If any individual is unclear about whether support received can be kept in a privileged or confidential manner, they should ask the provider directly.)

D. ADDITIONAL COMMUNITY RESOURCES

There are various organizations that provide crisis intervention, counseling, and medical services, as well as assistance with navigating the criminal/civil legal system. Members of the NEC community are encouraged to use the resources that are suited to their needs, whether on or off campus. Some resources in the local Boston area include:

COMMUNITY RESOURCES

- Asian Task Force (ATASK): Serves survivors of domestic violence; 24-hour Multilingual Helpline:
 - 617-338-2355
 - <http://www.atask.org/site/>
- Fenway Community Health Violence Recovery Program (VRP): Specialize in working with LGBTQI community.
 - 617-927-6250 or 800-834-3242
 - <https://fenwayhealth.org/care/behavioral-health/violence-recovery/>
- Casa Myrna: Serves survivors of relationship violence. Advocates are bilingual in English and Spanish. Safelink Domestic Violence 24-Hour Helpline:
 - 877-785-2020
 - <https://casamyrna.org/get-support/safelink>

ADMINISTRATIVE AGENCY RESOURCES

- Massachusetts Commission Against Discrimination (MCAD)
 - 617-994-6000
 - <https://www.mass.gov/orgs/massachusetts-commission-against-discrimination>
 - The MCAD enforces certain Massachusetts laws prohibiting sex discrimination and sexual harassment.
- Equal Employment Opportunity Commission (EEOC)
 - 800-669-4000
 - <https://www.eeoc.gov/field-office/boston/location>
 - The EEOC enforces federal law prohibiting sexual discrimination and sexual harassment in the workplace.

- U.S. Department of Education, Office for Civil Rights (OCR)
 - 617-289-0111
 - <https://www2.ed.gov/about/offices/list/ocr/index.html>
 - OCR enforces federal laws prohibiting discrimination against students, including Title IX.

III. TITLE IX PROHIBITED CONDUCT

This section identifies and defines Prohibited Conduct under this Policy.

Sexual Assault

Having or attempting to have sexual intercourse or sexual contact with another individual without consent. This includes sexual intercourse or sexual contact achieved by the use or threat of force or coercion (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 romantic or intimate relationship with the survivor. 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 a current or former spouse or intimate partner of the victim, or someone similarly situated; a person with whom the survivor shares a child in common; or any other person against an adult or youth survivor 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.

Title IX Sexual Harassment

Title IX Sexual Harassment includes conduct on the basis of sex that meets one or more of the following definitions:

- o Conditioning the provision of any educational benefit or service on a person's participation in unwelcome sexual conduct ("quid pro quo" sexual harassment); or
- o Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Conservatory's educational programs or activities ("hostile environment" sexual harassment).

Determinations that an individual committed sexual assault, dating violence, domestic violence, or stalking, as defined in this Title IX Prohibited Conduct section, may also constitute a form of hostile environment sexual harassment and/or may be considered with other behaviors to constitute hostile environment sexual harassment.

Stalking

A course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress. This includes cyber-stalking, a particular form of stalking in which electronic media is used to pursue, harass, or make unwelcome contact with another person. Stalking may involve individuals who are known to one another or have an intimate or sexual relationship, or may involve individuals not known to one another.

Retaliation

Acts or attempts to retaliate or seek retribution against individuals who report conduct prohibited by this Title IX 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 Title IX Policy, or responded to, assisted, or participated in any manner in an investigation under the Title IX 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.

IV. STANDARD OF PROOF

Preponderance of the Evidence. The standard of evidence that NEC uses to determine responsibility for violating this Policy is the preponderance of the evidence. This means that in reviewing allegations of prohibited conduct, the totality of the evidence will be considered to

determine whether the Respondent is more likely than not to have been responsible for a violation of the Title IX 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 – criminal processes versus NEC’s policy – are significantly different and use different standards for determining violations.

V. REPORTING PROHIBITED CONDUCT AND INVESTIGATION PROCESS

NEC encourages community members who have experienced any potential sexual misconduct, regardless of whether the incident occurred on or off-campus or whether the conduct is prohibited under Title IX, to inform the Title IX Coordinator, so that the Title IX Coordinator can offer appropriate supportive measures and information regarding available reporting options under applicable policies.

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 that permits the submitter to submit an anonymous report and to exchange 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 Policies Against Sexual Misconduct (<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.

Reports that fall within the federal Title IX regulations will follow the below process.

1. Informal Reports

Reports of conduct that may fall within this Policy can be submitted to the Title IX Coordinator regardless of where they occurred. After receiving an informal report of conduct that could fall under the Title IX 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 Title IX Policy or a referral to another NEC policy, including, without limitation, the **Gender-Based Misconduct Policy**. These initial steps may include, but are not limited to, the following:

- A. **Contact Complainant.** The Title IX Officer will contact the Complainant (if known) and encourage them to meet virtually or in person to discuss the nature and circumstances of the report, review relevant documentation that is available, and describe the various options available to them.
- B. **Review Supportive Measures.** Regardless of whether a Complainant decides to participate in an adjudication process, they may be entitled to supportive measures, as defined in the Definitions section of this Policy.

The decision to implement supportive measures will be communicated by the Title IX Officer in writing. NEC will seek to be transparent with regard to supportive measures that impact both parties. The Conservatory may be limited in certain situations when student or employee privacy issues prevent disclosures.

- C. **Review Reporting Options.** The Title IX Officer will review the processes, options, and protections in this Title IX Policy. The Title IX Officer will also explain the right to submit a formal complaint and the right to delay or decline to submit a formal complaint to NEC.

In circumstances in which a Complainant has made a report to law enforcement, such a report will not change any obligation of NEC to investigate the matter, but it may delay the timing of the investigation, such as if a law enforcement agency requests that NEC delay its process for a reasonable amount of time to allow it to gather evidence of criminal conduct. NEC does not use the same process or standard of proof as a criminal process. Typically, NEC will only inquire about criminal processes if they impact an individual’s ability to access or use NEC’s process. In no instance will a concurrent criminal proceeding, by itself, lead to an adverse inference against the Respondent.

2. Formal Complaint

If the Complainant wishes to move forward with an investigation under this Policy, the Complainant must provide a statement of allegations in writing, referred to in this Policy as the

formal complaint. A Complainant may submit a formal complaint at any time by preparing a written document that is physically or electronically signed by the Complainant, alleges Title IX Prohibited Conduct as defined in this Policy, and requests that NEC investigate the allegation. A formal complaint can be submitted regardless of where the incident occurred, and the Title IX Coordinator will review the content of the complaint to determine if it should be investigated, whether under this Policy or another NEC policy. A formal complaint meeting the above criteria may be submitted to the Title IX Coordinator in any of the following ways:

- a. By delivering, mailing, or otherwise transmitting the formal complaint to the Title IX Coordinator;
- b. By emailing the formal complaint to titleix@necmusic.edu;
- c. By completing a **Reporting Violations of NEC's Policies Against Sexual Misconduct Form**; or
- d. Through any other means that results in the Title IX Coordinator receiving the person's signed formal complaint.

If the Complainant declines to proceed with an investigation under this Policy and does not submit a formal complaint, the Title IX Officer will weigh that request against NEC's obligation to address any risk of harm to the community based on the allegations in a report and may sign a formal complaint against another party if deemed necessary. In such situations, the Title IX Officer and/or NEC is not a party and will provide notice, as set forth below, to both the Complainant (the person impacted by the behavior at issue) and Respondent (the person accused of such behavior).

As soon as practicable after receiving a formal complaint, and with sufficient time to prepare for any interview or meeting, the Title IX Coordinator will provide a written notice to all known parties that will include: a description of the allegations as they are understood at the time, including, to the extent known the name(s) of the parties, the date, 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, and a statement that the Respondent is presumed not responsible for the alleged conduct. This written notice does not constitute a finding or a determination of responsibility. The written notice will be updated or amended if new allegations are raised by either party and accepted for investigation.

In appropriate circumstances, to address imminent threats posed to any person's physical health or safety as a result of the allegations in a formal complaint, NEC may evaluate whether to remove a Respondent from its education program and activities on an emergency basis or to place an employee on leave during the Title IX Investigation Process.

- a. **Emergency Removal.** NEC may remove a Respondent from its education programs or activities on an emergency basis following an individualized safety and risk analysis that determines there is an immediate threat to the physical health or safety of any individual arising from the allegations of prohibited conduct. The Respondent shall

receive notice of any such removal and have the opportunity to challenge the decision immediately following the removal.

- b. Administrative Leave. NEC may place an employee on leave during the Title IX Investigation Process.

3. Preliminary Review of Formal Complaint

Upon receipt of a formal complaint, the Title IX Officer will conduct a preliminary review to determine whether:

- a. the conduct is alleged to have occurred in the United States;
- b. the conduct is alleged to have occurred in its education programs or activities; and
- c. whether the formal complaint alleges facts that, if true, may constitute a violation of the Title IX Policy.

If the Title IX Officer determines that the formal complaint meets the above criteria, the matter will be referred to the Title IX investigation process.

If a formal complaint alleges that a Respondent engaged in conduct that potentially violates both NEC's Title IX Policy and other NEC policies, the Title IX Officer may within their discretion choose to resolve some or all the non-Title IX charges pursuant to the processes in NEC's Title IX Policy and will contemporaneously inform the 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.

4. Dismissal of Formal Complaint

If a formal complaint is submitted that does not allege Title IX Prohibited Conduct, as defined above, it will be dismissed in compliance with the federal Title IX regulations. Any allegation in a formal complaint that is dismissed because it does not constitute Title IX Prohibited Conduct or does not fall within the scope and jurisdiction of this Policy, may be addressed through another NEC policy, such as NEC's Gender-Based Misconduct Policy, if appropriate based on the facts at issue.

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

- a Complainant notifies the Title IX Officer in writing that they wish to withdraw the formal complaint or any allegation(s) contained in that formal complaint; or
- the Title IX Officer determines that specific circumstances will prevent NEC from gathering sufficient information to reach a determination on the formal complaint, or any allegations contained in the formal complaint.

If a formal complaint is dismissed under this section, the Title IX Officer will provide a Notice of Dismissal to the Parties and information regarding how to appeal the decision.

5. Title IX Investigation Process

- A. **Notice of an Investigation.** If it is determined that an investigation will begin, the Title IX Officer will send a written notice to the parties advising them that the preliminary review has concluded and the matter will be referred to the Title IX Investigation Process.
- B. **Advisors.** Each party may have a single advisor or support person of their choice present during any formal disciplinary proceeding, including any related meeting, interview, or hearing, held pursuant to the Title IX Policy. This may include an advocate or counsel. A party may consult with their advisor during any related meeting, interview, or hearing including to the extent expressly permitted in the hearing process outlined below, but advisors cannot act as a speaking advocate at a meeting or interview nor can they interfere with this process. NEC staff and internal/external personnel involved in the Title IX Investigation 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. An advisor is subject to the same confidentiality expectations applicable to others in attendance and may be asked to consent that they understand their role and will keep any specific details private to protect the sensitive information they may learn. Accommodations, including scheduling of interviews or reviews, generally will not be made for any advisors if they unduly delay the process. An advisor is not permitted to attend a meeting, interview, or other proceeding without the party they are advising being present unless they receive the advance approval of the Title IX Officer. NEC reserves the right to take appropriate action in response to any advisor who disrupts the investigation and/or hearing process or who does not abide by rules and protocols regarding their participation, including, without limitation to protocols identified in this Policy.

Any person serving as a party's advisor is prohibited from publicly disclosing private information learned during this process, including information protected under the Family Educational Rights and Privacy Act ("FERPA") or other state or federal laws. Further, advisors are expected to maintain the privacy of all parties and witnesses to the greatest extent possible. If any advisor is concerned about violating this assurance of privacy to gather evidence, they should raise such concerns with the Title IX Officer immediately so that it can be appropriately addressed to protect the sensitivity of the information without limiting the ability of either party to find and present relevant evidence.

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

- C. **Designation of Investigator.** The Title IX Officer will designate at least one investigator to conduct a prompt, fair, and impartial investigation of the formal complaint and prepare a report of investigative findings (the “Investigative Report”).² The Investigator will be a qualified and trained individual employed by or engaged by the Conservatory for the purpose of conducting investigations under the Title IX Policy, who shall have received training on issues relating to sexual misconduct and investigatory procedures to protect the safety and rights of students and employees.

The Title IX Officer will provide the Parties with the name of the person(s) assigned to investigate the reported conduct. As soon as possible, but no later than three (3) calendar days after delivery of the identity of the Investigator, the Parties shall inform the Title IX Officer in writing of any conflicts of interest with regard to the selected Investigator(s). The Title IX Officer will consider the nature of the conflict and determine if different individuals should be assigned as Investigator(s). The Title IX Officer’s decision regarding any conflicts is final. The Title IX Officer may consult with other Conservatory personnel to discuss any conflicts of interest.

- D. **Nature of the Investigation.** The investigation provides an opportunity for fact-finding and, to the extent possible, will include separate interviews with the Complainant, the Respondent, and any relevant witnesses. The Investigator will provide the Parties with advance notice of meetings at which their presence is required.
- E. **The Parties’ Identification of Potential Witness and Documentation.** The Parties have the opportunity (and are expected) to provide the Investigator with the identification of potential witnesses who have specific information about the reported conduct and with whom they would like the Investigator to speak. The Parties also have the opportunity (and are expected) to provide the Investigator with any documentation or other items or questions they would like to be considered. All information described in this section should be presented to the Investigator in writing and include a brief description as to how the potential witnesses, documents, and/or items are relevant to the reported conduct. This information must be provided to the Investigator during the Investigation Process and without delay upon becoming aware of it. The Investigator will exercise discretion in their determination of what information to consider and which potential witnesses can provide relevant information to the investigation. The Conservatory reserves the right to limit the submission of evidence and information that was within the Party’s

² All references to the “investigator” in this Policy should be read to include “investigators” in the event that NEC designates more than one investigator to conduct the investigation of the formal complaint.

possession or knowledge during the Investigative Process if the Conservatory determines that the information was withheld for strategic advantage, *e.g.*, a surprise witness at the hearing. Furthermore, the Conservatory reserves the right to interview any member of the Conservatory community that may have specific information about the incident that has been reported.

- F. **Investigation Prohibitions.** At no point will the investigation require the Parties to be in the same room. At no point will either party be permitted to question or cross-examine the other party or any witness directly during the investigation, determination or appeal process. The Parties may ask questions of another party and/or witnesses at the Determination Hearing through an advisor as described below. The Investigator will not consider information related to either party's sexual history unless deemed relevant to the incident in question.
- G. **Other Informal Processes.** At any time prior to convening a Determination Hearing, either party may request an informal resolution of a complaint rather than an investigation and/or hearing by contacting the Title IX Officer. Under the federal Title IX regulations, NEC is not permitted to offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student. 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. The Parties and the Title IX Officer must agree in writing to informal resolution for this option to be used. The Title IX Officer will designate a Conservatory representative or outside service provider to facilitate a dialogue with the parties in an attempt to reach a resolution. The Title IX Officer, in consultation with the facilitator, can end such a process if it becomes unproductive and/or abusive. The allegation will only be deemed resolved when the Parties expressly agree to an outcome that is acceptable to them and which is approved by the Title IX Officer in consultation with other appropriate Conservatory administrators. Either party may withdraw from the informal resolution process at any time. The informal resolution process will be conducted in accordance with procedures specified by the Title IX Officer. The investigation will typically be paused during any informal resolution efforts; if an informal resolution is unsuccessful, the formal investigation will restart where it was paused.

6. Investigative Report and Determination of Responsibility by Determination Hearing

- A. **Content of the Investigative Report.** At the conclusion of the Investigation Process, the Investigator will prepare an Investigative Report, which should include a summary of the factual information presented during the Investigation Process and a separate section where the Investigator points out relevant consistencies or inconsistencies (if any) between all sources of information. Along with the Investigative Report, the Investigator will provide any relevant evidence gathered,

whether inculpatory (*i.e.*, proving the responsibility of a party) or exculpatory (*i.e.*, proving that a party did not commit the conduct alleged). The Investigative Report will not include a determination as to whether a party has violated the Title IX Policy or what sanctions may be appropriate. These determinations will be made by the Determination Officer, as described below.

- B. Review by the Parties.** The Parties will be given an opportunity to review the entire Investigative Report and to submit written comments and/or questions about the content of the Investigative Report to the Investigator within ten (10) calendar days of the date they are notified that the Investigative Report is available for review. This review will take place at a location and in a manner determined by the Title IX Officer. The time to submit written comments can be extended for a brief period if the Title IX Officer concludes that the additional time is warranted. In circumstances where an extension is provided to one party, it will be provided to the other party. Likewise, the location and manner of reviewing the Investigative Report can be modified if the Title IX Officer deems it necessary and appropriate. Each party may have their advisor present as they review the Investigative Report, but the Conservatory reserves the right to monitor the review or create appropriate procedures to protect the privacy and sensitivity of the materials in question.
- i.** Photographs or any other copies of the Investigative Report are not allowed by a party or advisor. 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. 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 is irrelevant (or prohibited) and therefore not to be considered and/or will be redacted. If further investigation is conducted, the Investigator will include any additional relevant information in the Investigative Report.
 - ii.** If, at any point in this review process or the prior investigation, it becomes apparent that a witness will not take part and subject themselves to examination in the Determination Hearing described in Section II(E), below, the Investigator may revise the Investigative Report to remove that information so as not to impact the Determination Hearing. If this decision is made prior to the Parties' review, it will be noted in a cover memo to the Investigative Report. If the decision is made following the Parties' review, it will be communicated to the Parties and they will be informed in writing of any information that will be removed prior to the Determination Hearing.

- iii. The Investigative Report will then be submitted to the Title IX Officer. Any submissions made by either party pursuant to this section, as well as any other documentation deemed relevant by the Investigator(s), will be attached to the Investigative Report.

C. The Determination Hearing: Conflicts and Provision of Investigative Report. The Title IX Officer will inform the Parties of the identity of the Determination Officer.³ The Determination Officer may be employed by or engaged by the Conservatory for the purpose of conducting determination hearings under the Title IX Policy. The assigned Determination Officer shall have received training on issues relating to sexual misconduct and hearing procedures. 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) calendar 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 Investigative Report and set a subsequent date for the Determination Hearing to determine responsibility.

D. Review and Determination by the Determination Officer. The Determination Officer will make a determination as to whether or not there exists a preponderance of evidence that the Respondent violated the Title IX Policy by having engaged in some or all of the reported conduct. The Determination Officer also has the authority in individual circumstances to ask the Investigator to conduct additional investigation on specific points prior to the hearing. If further investigation is required, the information learned will be conveyed to the parties at least five (5) days prior to the hearing.

E. Hearing Process. Any Formal Complaint subject to investigation under this Policy is adjudicated through a live hearing that can be conducted in person or virtually as determined by the Title IX Officer. The hearing will follow the process described in this Policy but NEC and/or the Determination Officer may modify the hearing process if necessary under the circumstances, including to ensure a fair hearing for both parties. The following hearing process shall apply:

³ 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. 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.

- 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 cross-examination questions will or will not be permitted.
- ii. Each party may have an advisor of their choice present at a hearing for the limited purpose of conducting cross-examination on behalf of that party. If a party does not have an advisor of their choice present at a hearing, the Conservatory will, without fee or charge to the party, provide an advisor, who may or may not be an attorney. No later than five (5) business days before the hearing, the Parties must inform the Title IX Officer of the identity of any advisor who will accompany them to the hearing so that the Conservatory will know whether or not it needs to arrange for a Conservatory-provided advisor.
- iii. At a time and manner deemed appropriate by the Determination Officer, the advisor for each party will be permitted to ask the other party and any witnesses relevant questions and follow-up questions, including those challenging credibility. Except for that limited role, advisors may not participate actively in the hearing and may not speak or otherwise communicate on the part of a party. However, the advisor may consult privately in a non-disruptive manner with their advisee during and/or at a recess in the hearing. 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. If an advisor must be removed subject to this provision, NEC reserves the right to pause and reschedule the hearing until an alternate advisor is appointed and the Determination Officer is ready to proceed.
- iv. There may be restrictions on evidence considered by the Determination Officer, including, without limitation: (1) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless (a) they are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or (b) they concern specific incidents of the Complainant's prior sexual behavior with respect to

the Respondent and are offered to prove consent; and (2) information protected under a legally recognized privilege (*e.g.*, privileged communications between a party and their physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a treatment capacity, or privileged communications between a party and their attorney) are not relevant unless the person holding the privilege has waived the privilege in writing.

- v. At the request of either party, the Conservatory will provide for the hearing to occur with the Parties located in separate rooms with technology enabling the Determination Officer and Parties to simultaneously see and hear the party or the witness answering questions. Live hearings may be conducted with all parties physically present in the same geographic location or, at Conservatory's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- vi. If a party or witness does not appear and submit to cross-examination at the hearing, the Determination Officer may consider the party's or witness's prior statements as allowed by current federal guidance and/or federal case law in effect at the time of the hearing, such as statements made during the investigation (for example, as set forth in the investigative 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 or witness'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.
- vii. If the Determination Officer determines that a party is responsible for violating this Policy, they will also determine sanctions. The Determination Officer may request from the Conservatory information on prior sanctioning decisions so that the Determination Officer can apply a consistent sanction in the matter at hand.
- viii. 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 at least the same protective measures as used in Section 6(B) of this Policy regarding review of investigative reports. Given the sensitivity of the subject matter commonly at issue in hearings under this Policy, NEC reserves the right to provide additional protections for this recording or transcript.

- F. **Notification of Investigation Outcome.** Not later than ten (10) business days after the Determination Officer's final determination of whether there has been a violation of the Policy, unless there is good cause for additional time, the Title IX Officer shall simultaneously provide both parties with written notice of (i) the outcome of the disciplinary proceeding and any sanctions imposed on the Respondent; and (ii) the procedures for either party to appeal the result of the disciplinary proceeding. In appropriate circumstances, the Conservatory may briefly delay notice of outcome to either party if safety planning is necessary to ensure the safety and/or well-being of either party or the NEC community.

7. Appeals

- A. The parties may appeal: (i) a decision to dismiss the formal complaint; and/or (ii) the Determination Officer's decision. 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 error that materially prejudiced the findings/outcome.
 - Newly discovered material information that was not known/available and which likely could have changed the finding of responsibility or the sanction imposed had it been available.
 - Bias or a conflict of interest with regard to the Title IX Officer, Investigator, or Determination Officer that materially impacted the outcome or the sanction.
- B. The party submitting the appeal must set forth in detail the grounds for review, including specifically how the issue for appeal (procedural error, newly discovered materials, and/or bias) materially impacted the outcome and must attach all materials that they wish to have considered in the appeal process. The Title IX Officer will provide a copy of the appeal to the other party, at which time they may provide a written response if they choose.
- C. The Appellate Officer(s): The Title IX Officer will provide both parties with the name of the Appellate Officer.⁴ The Appellate Officer may be an NEC employee or be engaged by the Conservatory for the purpose of conducting appellate review under the Title IX Policy. As soon as possible, but no later than three (3) calendar days after delivery of the identity of the Appellate Officer, the Parties should inform the Title IX Officer in writing of any conflicts of interest regarding the assigned Appellate Officer.

⁴ The Conservatory reserves the right to designate up to three individuals to review the appeal. The decision to appoint more than one Appellate Officer will be made based on the individual claims and the specific challenges raised on appeal. 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.

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. Sanctions of all types may be imposed while an appeal is pending at the sole discretion of the Conservatory.

8. Additional Considerations

- A. **Disability Accommodations.** The Conservatory is committed to ensuring that all community members, and 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 Director of Human Resources or designee (employees or other community members). Any requested accommodations will be provided in consultation with the Title IX Officer to evaluate any impact on the rights or protections of any party or witness.
- B. **Duty of Honesty.** The Parties and witnesses are obligated to be honest during the course of the entire process set forth in this Policy. Any person who knowingly makes a false statement – either explicitly or by omission – in connection with any part of the process may be subject to separate disciplinary action. A report 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.
- C. **Duty of Cooperation.** The Parties and witnesses are obligated 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 Duty of Cooperation does not apply to an individual's decision not to take part in this process out of consideration of constitutional rights in a criminal investigation involving the same or similar facts and circumstances.
- D. **Amnesty.** To encourage students to refer incidents involving possible sexual misconduct or safety concerns, NEC generally will extend amnesty for drug and alcohol policy violations to students who report alleged Title IX prohibited conduct and/or gender-based misconduct, 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.

- E. **Special Situations.** The Conservatory retains the right to determine, in its sole discretion, if it will address a report of conduct under this Policy administratively and outside of the process described in this Policy when the safety of the Conservatory community is at risk, if there are extenuating circumstances involving either of the Parties, or if the Title IX Officer, in consultation with appropriate administrators, determines it is in the best interest of the Conservatory and/or the Conservatory community to do so. If the Conservatory alters the process set forth in this Policy, it will contemporaneously communicate changes to the parties. The Conservatory also reserves the right to update the definitions in this Policy, including definitions of Title IX 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.
- F. **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.
- G. **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. NEC may place a designation on the student's transcript until the allegations have been resolved. The student will not be permitted to enroll in an NEC program unless all sanctions have been satisfied.

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.

- H. **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 NEC to override a request for privacy or confidentiality in order to meet its legal obligations. In the event circumstances result in NEC overriding a request for privacy or confidentiality to meet its obligations, it will do so with sensitivity and respect for the circumstances and the individuals involved.
- I. **Recording the Proceedings.** The Parties are not permitted to make individual video, audio, or other electronic, photographic, or digital recordings of any meetings or proceedings held under the Title IX Policy or of the Investigative Report.
- J. **Respondent Voluntary Agreement to Policy Violation.** At any point prior to the conclusion of the investigation, a Respondent may agree in writing to the alleged violation(s) of the Policy and may offer a proposed sanction. It is within NEC's sole discretion to accept the admission or the proposed sanction or assign a different sanction.

VI. DEFINITIONS

This section provides definitions for certain terms used in this Policy.

Advisor

A person chosen by a party, who may but need not be an advocate or 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 domestic educational programs or activities and who alleges they experienced prohibited conduct as defined by the Title IX 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 Title IX Policy and the Conservatory will not be considered a party to the matter, though it will maintain the burden of proving that any individual violated the Title IX Policy.

Consent and Related Concepts

The Conservatory 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 wrongfully impair the other's freedom of will and ability to choose whether or not to engage in sexual activity. Coercion also includes administering or pressuring another to consume a drug, intoxicant, or similar substance with the intent to impair that person's ability to consent prior to engaging in sexual activity.
- **Incapacitation**
 - Incapacitation is the inability, temporarily or permanently, to give consent, because an individual is mentally and/or physically helpless, unconscious, or

unaware that the sexual activity is occurring. This may or may not be due to alcohol or other drugs (see below).

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

- **The Impact of Alcohol or Other Drugs on Consent**

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

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

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

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.

Formal Complaint

A document submitted by a Complainant alleging that a Respondent engaged in conduct prohibited by the Title IX Policy and requesting that the Conservatory investigate the allegation. In exceptional situations, the Title IX Officer may sign a formal complaint in place of a Complainant. If the Title IX Officer signs a formal complaint, the Title IX Officer is not a party to a matter and the party who has standing to be a Complainant under the Title IX Policy shall receive all requisite rights. Similarly, the Respondent will receive the name of the Complainant, written notice as described in the Formal Complaint section of the Title IX Policy, and all other requisite rights.

Parties

The Complainant(s) and the Respondent(s). The Parties are referred to individually as a “party.”

Prohibited Conduct

As used in the Title IX Policy, “prohibited conduct” refers to all conduct identified in the “Title IX Prohibited Conduct” section of the Title IX 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. “Title IX prohibited conduct” refers to the categories of prohibited conduct defined by the regulations implemented in the federal Title IX regulations.

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.

Respondent

A person reported to have engaged in conduct that could constitute Prohibited Conduct under the Title IX Policy.

Sanctions

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

Supportive Measures

Non-disciplinary, non-punitive individualized services, offered as appropriate, as reasonably available, and without fee or charge to either the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures are designed to restore or preserve equal access to the Conservatory's educational programs or activities, and they will be designed so as not to unreasonably burden the other party. Supportive measures may include but are not limited to: counseling; academic accommodations, such as extensions of deadlines or other course-related adjustments; course changes or drops; modifications of work or class schedules; campus escort services; mutual restrictions on contact between the parties; residential accommodations, including but not limited to arranging for new housing, or providing temporary housing options, as appropriate; changes in work locations; leaves of absence; increased security and monitoring of certain areas of the campus; and no trespass notices, among others. Factors to be considered in determining reasonable supportive measure may include the following:

- the specific need expressed by the party;
- the burden on the non-requesting party;
- the severity and/or pervasiveness of the allegations;
- whether the parties share the same residence hall, dining hall, class, extracurricular activities, transportation and/or job location; and
- whether other judicial measures have been taken to protect a party or the parties.

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