

## Policy on Rights and Responsibilities Under Title IX

### GOVERNANCE AND LEGAL

Effective Date: January 15, 2014

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Supersedes: N/A

Related Policies:

Policy on Equal Opportunity

Policy on Non-Fraternization

Policy on Sexual Harassment

OIDI Grievance Procedure; Code of Student Conduct

Responsible Office/Department: Office for Gender Equity and Compliance

Keywords: Sexual Harassment; Sexual Assault; Discrimination; Domestic Violence; Dating Violence; Stalking

### I. Purpose and Scope

Northeastern University is committed to providing equal opportunity to its students and employees, and to eliminating discrimination when it occurs. In furtherance of this commitment, Northeastern University strictly prohibits discrimination and harassment on the basis of race, color, religion, religious creed, genetic information, sex, gender identity, sexual orientation, age, national origin, ancestry, veteran, or disability status.

This Policy articulates how the university will respond to reports of sex and gender-based discrimination (as defined below as Prohibited Offenses), in compliance with Title IX of the Education Amendments of 1972 ("Title IX"), as well as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), and the Violence Against Women Reauthorization Act ("VAWA") of 2013 as defined below. This policy provides a consolidated statement of the rights and responsibilities of university community members under university policies and describes how individuals may report allegations of Prohibited Offenses to the university; how the university will coordinate the prompt and equitable investigation of allegations of Prohibited Offenses; how the university will identify the roles of and deliver the rights and responsibilities of individuals involved in the investigative process; how the university will provide interim remedies, adjudication options, and relevant disciplinary actions; and how the university will train and educate the campus community about this Policy.

This Policy applies to all members of the university community, including students, employees, faculty, staff members, volunteers, and guests in connection with university activities. It further applies to allegations of Prohibited Offenses involving students, faculty, or staff members that occur on or off property owned or controlled by the university, in the context of a university education program or activity, or outside the context of a university education program or activity, but which nonetheless creates a hostile environment in an education program or activity. This Policy does not apply to conduct between employees or Third Parties, where no student is involved, and the conduct does not otherwise give rise to a potential hostile environment in an education program.

In the event of any conflict or inconsistency between this Policy and other university policies or procedures that may relate to the subject matter hereof, this Policy shall take precedence and its provisions shall apply.

## **II. Definitions**

For purposes of this Policy:

### **A. Prohibited Offenses**

**Prohibited Offenses** is the conduct prohibited by this policy and includes Sexual Assault, Sexual Harassment, Sexual Exploitation, Domestic Violence, Intimate Partner Violence, Dating Violence, Stalking and Retaliation.

**Domestic Violence** means the intentional infliction of physical, sexual, or psychological harm on a current or former partner or spouse. Domestic Violence includes, but is not limited to, Dating, Intimate partner, and Relationship Violence.

**Retaliation** is any intentional or attempted adverse or negative act against a person who in good faith makes a report, serves as a witness, or participates in an investigation or adjudication process regarding an alleged violation of a Prohibited Offense, the Code of Student Conduct, or other university policy. Retaliation includes threatening, intimidating, harassing, coercing or any other conduct that would discourage a reasonable person from engaging in activity protected under this policy. Retaliation does not include good faith actions lawfully pursued in response to a report of Prohibited Offenses.

**Sexual Assault** means:

- the oral, anal, or vaginal penetration by an inanimate object, penis, or other bodily part without the consent of all parties involved;
- the attempted oral, anal, or vaginal penetration of an individual(s) by an inanimate object, penis, or other bodily part without the consent of all parties involved, or
- the touching of the intimate body parts of another – such as breasts, buttocks, groin, genitals, or the clothing covering them – without the consent of all parties involved.

**Sexual Exploitation** means when a person(s) takes non-consensual sexual advantage of another, for any purpose. Sexual Exploitation includes but is not limited to:

- *Inducing Incapacitation for the Purpose of Sexual Activity:* Providing drugs, alcohol, or other substances to a person(s) with or without their knowledge, with the intent to impair their ability to withhold consent or their ability to knowingly consent to sexual activity.
- *Photographing or Video/Audio Taping of Sexual Activity:* The intentional viewing, filming, photographing, and/or recording in any manner or by any means transmitting and/or disseminating any recording of any type of sexual acts, partial or full nudity, and/or related materials, sounds, or images of another person without the consent of all parties involved.
- *Voyeurism:* The act of intentionally observing, spying on or listening to a person(s) involved in sexual activity or in any state of undress. Voyeurism also occurs when an individual allows others to observe this behavior without the consent of all parties involved.

**Sexual Harassment** is any unwanted or offensive sexual behavior that has the purpose or effect of creating a hostile living, learning, or working environment, or whenever toleration of such conduct or the rejection of it is the basis for a personal or academic decision affecting the individual. Sexual harassment may be found in a single episode, as well as in persistent behavior.

Examples of sexually harassing behavior include, but are not limited to: sexual advances; request for sexual favors; any form of retaliation or threat of retaliation against an individual who rejects such advances; sexual epithets, jokes, or comments; comment or inquiry about an individual's body or sexual experiences; unwelcome

leering, whistling, or name calling; sexual gestures; displaying sexually suggestive photos, cartoons, or videos.

A hostile environment exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with or deprives an individual from participating in or benefiting from the university's education or employment programs and/or activities. Conduct must be deemed severe, persistent, or pervasive from both a subjective and an objective perspective.

**Stalking** means a willful and/or malicious pattern of conduct or series of acts directed at a specific person, which seriously alarms or annoys that person and would cause a reasonable person to fear bodily injury or to suffer substantial emotional distress.

Examples of stalking include, but are not limited to, conduct, acts or threats conducted in person, or by mail, phone, electronic communication, or social media.

## **B. Other Definitions**

**Accused Party** means the university student, faculty or staff member against whom a complaint of Prohibited Offense has been alleged. The rights and obligations of employee accused parties and Third Party accused parties differ from those of student accused parties and are separately addressed in Section III(M) of this Policy.

**Advisor** refers to an individual chosen by a Victim or Accused Party to provide support and guidance through the investigatory and disciplinary processes of this Policy, including at interviews, meetings and hearings. The advisor may be any person, including an attorney, who is not otherwise a party or witness involved in the investigation.

**Allegation** is a concern reported to the university that a Prohibited Offense has been committed.

**Case Manager** refers to the university employee responsible for facilitating access to resources and interim remedies, as listed in Section III(L) of the Policy, for student Victims and student Accused Parties.

**Charged Student** means any student charged by the university with a violation of a university Policy. This designation takes place at the conclusion of an investigation if

the Title IX Coordinator determines that the Investigative Report contains information that constitutes an allegation of a Prohibited Offenses by an Accused Party. The Director of OSCCR or designee will notify the party of charges during a pre-hearing meeting.

The **Clery Act** is a federal law that governs the publication of the Campus Security Policy, the reporting of campus crime statistics, and certain aspects of the university's response to, and investigation of, Prohibited Offenses.

**Coercion** means the use of an unreasonable amount of pressure to initiate or continue sexual activity against an individual's will. Coercion is more than an effort to gain consent, or persuade, entice, or attract another person to engage in sexual activity. Coercion is addressed further in Section III(P)(iii) of this Policy.

**Complainant** means 1) a Victim who elects to pursue disciplinary charges, or 2) the university office pursuing disciplinary charges on behalf of the university.

**Confidential Employee** refers to university employees who are bound by their profession to confidentiality and, therefore, are not required to disclose information about Prohibited Offenses to the Title IX Coordinator without prior consent of the Reporting Party. Additional information about Confidential Employees can be found in Section III(B) of this Policy.

**Consent** means a voluntary, affirmative agreement to engage in sexual activity proposed by another; it requires mutually understandable and communicated words and/or actions that would demonstrate to a reasonable person agreement by both parties to participate in sexual activity. Consent is addressed further in Section III(P)(i).

**Incapacitation** means a state where someone cannot make a rational, reasonable decision because they lack the ability to understand the who, what, when, where, why, or how of their sexual activities. Incapacitation is addressed further in Section III(P)(ii).

**Investigative Report** means the written document produced by the Office of Gender Equity and Compliance after completion of the university's investigation into a report of an alleged Prohibited Offense. The Investigative Report may reference or rely upon facts gathered by prior investigators, including but not limited to the Northeastern University Police Department, local law enforcement or external investigators. The

Investigative Report will outline the investigator's findings of fact and recommend findings regarding violations of university policy, as applicable.

**Responsible Employee** refers to any university employee (excluding Confidential Employees), including faculty,<sup>[1]</sup> staff and student employees within Residential Life. Responsible Employees are required to immediately report allegations of Prohibited Offenses to the Title IX Coordinator.

**Third Party** refers to any individual who is not a university student, faculty member, or staff member (e.g., vendors, alumni, or local residents).

**Title IX** is a federal law that prohibits discrimination based on sex or gender in educational institutions that receive federal financial aid.

**Title IX Board** consists of three members (two staff members and one student) of a trained pool of the university community and, at the discretion of the Title IX Coordinator, external professionals trained to adjudicate allegations of Prohibited Offenses. The Title IX Board will review the Investigative Report to determine whether or not to affirm the Investigator's recommended findings by a preponderance of the evidence of Policy violations and, if applicable, determine any appropriate sanction(s).

**Title IX Coordinator** refers to the institutional lead and point of contact for the coordination of the university's Title IX initiatives, compliance with Title IX, responses to reports of Prohibited Offenses, development and delivery of training and education related to sexual violence, and the assessment of the university's effectiveness in responding to and remedying the effects of Prohibited Offenses. The Title IX Coordinator resides in the Office of Gender Equity and Compliance ("OGEC").

**Victim** means a university student who was subjected to an alleged Prohibited Offense that is reported to the university. The rights and obligations of employee victims and Third Party victims differ from those of students and are separately addressed in Section III(M) of this Policy.

### **III. Policy**

The university strictly prohibits and will take prompt and equitable action to prevent, detect and deter Prohibited Offenses, investigate and resolve any reported Prohibited Offenses, avoid their recurrence, and remedy their effects.

## **A. Reporting Prohibited Offenses**

Any person who becomes aware of an alleged Prohibited Offense is strongly encouraged to report such information to the university as provided below. Most university employees are Responsible Employees and are obligated to report allegations of Prohibited Offenses immediately to the Title IX Coordinator. However, the university offers options for Victims and/or Accused Parties to make confidential reports, which will not be forwarded for investigation or adjudication.

## **B. Confidential Resources**

The university offers confidential resources for medical treatment, emotional support and counseling through Confidential Employees. Confidential Employees are not required to disclose information about Prohibited Offenses to the Title IX Coordinator without prior consent of the student. Confidential Resources on campus include:

- University Health and Counseling Services (UHCS) staff
- Center for Spirituality, Dialogue, and Service (CSDS) spiritual advisors/leaders

For a complete list of confidential resources, please go to:

[www.northeastern.edu/titleix/reporting-options/](http://www.northeastern.edu/titleix/reporting-options/).

## **C. Reporting Options**

The university encourages any person to report information relating to an alleged Prohibited Offense in any of the following ways:

*Reporting to the Title IX Coordinator:* Prohibited Offenses may be reported to the Title IX Coordinator by completing the form available at [www.northeastern.edu/titleix/file-a-complaint/](http://www.northeastern.edu/titleix/file-a-complaint/) and selecting “Title IX: Sex and Gender-based Discrimination” under “Nature of This Report.” Reports can also be made in person at OGE. The Victim may request anonymity as noted below in Section III(F).

*Reporting to Law Enforcement:* Community members impacted by Prohibited Offenses are strongly encouraged, but not required, to report all allegations of Prohibited Offenses directly to Northeastern University Police Department (“NUPD”) as soon as possible, regardless of where the offense took place and whether or not the Accused Party is known to the Victim. As Responsible Employees, NUPD officers will report Prohibited Offenses to the Title IX Coordinator.

Title IX investigations by OGEC and criminal investigations by law enforcement, including NUPD, may proceed simultaneously as noted below in Section III(E). Reporting a Prohibited Offense to NUPD or other local law enforcement does not commit the Victim to future legal action.

#### **D. Timeframe for Reporting Allegations**

While there is no time limit to report a Prohibited Offense, the university's ability to respond and investigate may be impacted by the passage of time. Therefore, Victims and others with knowledge of a Prohibited Offense are strongly encouraged to report such information as soon as possible after the occurrence of the alleged Prohibited Offense. Prompt reporting is essential to preserving physical evidence and documenting fresh recollections of events. Additionally, as time passes, the university may no longer have jurisdiction over Accused Parties or material witnesses and may be unable to compel their participation or take disciplinary action.

#### **E. University and Law Enforcement Investigations**

The OGEC will conduct a Title IX investigation into allegations of Prohibited Offenses where the accused party is a student, faculty or staff member. The Title IX Coordinator will assign one or more Title IX investigators trained in investigating complaints of sex and gender-based discrimination. The investigator(s) may be internal (e.g. investigators in the Office of Gender Equity and Compliance, and/or investigators in the Northeastern University Police Department) and/or external investigator(s) selected in the university's sole discretion.

Title IX investigations and any subsequent adjudicatory proceedings may be carried out prior to, simultaneously with, or following legal proceedings, whether civil or criminal. Neither a decision by law enforcement regarding prosecution nor the outcome of any criminal proceeding will be considered determinative of whether a violation of this Policy occurred. At the request of either NUPD or another law enforcement agency, the Title IX Coordinator may delay the Title IX investigation into an alleged Prohibited Offense for a reasonable period of time during the initial stages of a criminal investigation. Title IX investigations will commence after law enforcement notifies the Title IX Coordinator that it has completed the initial criminal investigatory stages.

Information gathered by NUPD or other law enforcement during a criminal investigation may become part of the Title IX investigation when provided to the Title

IX investigator. While a Title IX investigation may be delayed during the preliminary stages of a criminal investigation, the Title IX investigator will make efforts, in collaboration with NUPD, to obtain information gathered by law enforcement and include it in the Investigative Report.

#### **F. Requests for Anonymity**

If a Victim requests to remain anonymous during a Title IX investigation, the Title IX Coordinator will consider the request, balancing the request in the context of the university's responsibility to provide a safe and non-discriminatory environment for university community members, as well as the fair and equitable treatment of the individuals involved. This includes the Accused Party's right to receive notice of allegations that prompted the investigation. The university will take reasonable steps to investigate and respond to a report of a Prohibited Offense consistent with the request for anonymity, but its ability to investigate may be limited by the request.

The university may not be able to honor requests for anonymity in all cases. In such cases, the Title IX Coordinator will notify the Victim that the university intends to proceed with an investigation, and the possibility that during the investigation, the Victim's identity may have to be disclosed to individuals who may have relevant information regarding the allegation.

#### **G. Options and Rights in the Adjudication Process**

*Adjudication Processes:* Upon completion of a Title IX investigation, an Investigative Report will be forwarded to the Title IX Coordinator. If the Title IX Coordinator determines that the Investigative Report contains information that constitutes an allegation of a Prohibited Offense, the case will be referred by the Title IX Coordinator to the Director of OSCCR (Office for Student Conduct and Conflict Resolution) for student Accused Parties, or to Human Resources Management for employee Accused Parties. See the processes described in **Appendix A** and **Appendix B** for more information.

*Outcome and Appeals:* Upon conclusion of the adjudicatory process, the Victim and Accused Party will receive simultaneous notification in writing of the outcome. This notice will be delivered to the Victim's and Accused Party's university email accounts. The Victim and Accused Party have the right to appeal the outcome of any adjudicatory proceedings as noted in **Appendix A** and **Appendix B**.

*Request for No Adjudication by the Victim:* If a Victim does not wish for the university to take disciplinary action against an Accused Party, or withdraws their report prior to the adjudication process, the Title IX Coordinator will refer the matter to the Title IX Coordinating Committee for assessment. The Committee will review the facts gathered during the investigation to determine if adjudicatory proceedings are nonetheless required in order to address a potential hostile environment in a university education program or to protect the safety of the university community. In making this determination, the Title IX Coordinating Committee will review the Investigative Report for any of the following facts:

- the Accused Party has a prior record of committing Prohibited Offenses;
- the Accused Party displayed any signs of predatory behavior;
- violence or any weapons were used by the Accused Party;
- other individuals were involved in the commission of the Prohibited Offense;
- the Accused Party presents a continuing threat to the university community; and/or
- a hostile environment may exist in a university education program as a result of the alleged Prohibited Offense.

If the Investigative Report contains any of the above facts or allegations, an Investigative Report will be forwarded for adjudication consistent with the status of the Accused Party as student or employee. The Title IX Coordinator will notify the Victim if a determination is made to proceed with an investigation and explain the Victim's right to participate or not participate in the investigation or in any other actions undertaken by the university.

#### **H. Truthfulness; Participation in the Investigatory and Adjudication Processes.**

Victims and Accused Parties have the right, and are strongly encouraged, to meet with an OGEIC investigator to identify relevant witnesses and/or provide relevant information. Victims, Accused Parties and witnesses are required to be truthful, to cooperate with the university in its investigation of Prohibited Offenses and to follow the directions of university staff and administrators. Notwithstanding this requirement, Victims and Accused Parties may choose to participate or not in the

investigation and adjudication, if applicable, of alleged Prohibited Offenses. Those that choose not to participate in a Title IX investigation willingly forego their opportunity to present information and witnesses to be included in the Investigative Report, upon which further potential proceedings will be based. While the university reserves the right to proceed with investigation, adjudication and resulting disciplinary action in the absence of either party, no adverse inference will be drawn from an individual's decision not to provide information, witnesses or otherwise participate.

### **I. Confidentiality of the Investigation**

All individuals are required to keep confidential all documents and information received from the university during the investigatory and adjudication processes, and must destroy such documents and information at the direction of the university (except for outcome letters). Disclosing documents or information outside of the investigation and adjudication processes may be considered Retaliation.

### **J. Medical Amnesty**

Accused Parties, Victims and student witnesses will not be subject to disciplinary sanctions for drug or alcohol offenses that may have occurred in connection with an alleged Prohibited Offense. For the full Medical Amnesty Policy, please see the Code of Student Conduct.

### **K. Advisors**

The Victim and Accused Party may be accompanied by their respective Advisors at any meeting or interview related to the investigation and adjudication of a report under this Policy. While Advisors may provide support and advice to the parties during the meeting or interview, they may not speak on behalf of the parties or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings. For students, Advisors in the adjudication process are bound by the conditions established for Advisors within the [Code of Student Conduct](#).

### **L. Interim, Remedial and Protective Measures**

The university offers reasonable and appropriate measures to protect Victims, student Accused Parties, and student witnesses and to facilitate their continued access to university education programs and activities while maintaining the integrity of any investigation into an allegation of a Prohibited Offense. Upon receipt of a report of a

Prohibited Offense, the university will inform the Victim(s) and student Accused Party(s) of, and promptly provide access to, the following remedial and protective measures as appropriate:

- options for on- and/or off-campus medical, counseling, and other related services, including access to a Sexual Assault Nurse Examiner;
- options for temporary alternate housing arrangements, including immediate relocation to different university housing;
- residential hall ban;
- options for altering academic class schedules/obligations;
- options for altering student organization schedules/obligations;
- options for altering work schedule or job assignment;
- options for alternative transportation;
- options for seeking assistance from local law enforcement;
- options for receiving a university No Contact Order; and
- options for seeking a Judicial Harassment Protection Order or a Restraining Order.

The above remedial and protective measures may be temporary or permanent and are available to Victims even if they do not wish to participate in a Title IX or criminal investigation of the alleged Prohibited Offense. While principally intended for students, these measures may be extended to employee victims, accused parties or witnesses as determined appropriate by the Title IX Coordinator. Except under extraordinary circumstances as determined by the Title IX Coordinator, the university does not provide protective and remedial measures to Third Parties.

### **M. Overview of Rights of Third Party and Employee Victims**

Notwithstanding anything else provided in this Policy, this section defines the role, rights and obligations of Third Party victims and Employee victims.

#### **Third Party Victims**

Third Party victims may make reports to the university of alleged Prohibited Offenses by contacting NUPD and/or the Title IX Coordinator. A Third Party victim may participate in the investigation and adjudication process as a Witness. A Third Party victim may not serve as a Complainant; rather, a designee of the Title IX Coordinator will serve as the Complainant if the Title IX Coordinator determines that the Investigative Report should be forwarded for adjudication proceedings.

### **Employee Victims**

Employee victims may make reports to the university of alleged Prohibited Offenses by contacting NUPD and/or the Title IX Coordinator. An employee victim may participate in the investigation and adjudication processes as a Complainant or a Witness.

## **N. Overview of Procedures and Sanctions based on Status of Accused Party**

### **i. Allegations Where the Accused Party is a Student**

The procedures for responding to, investigating and adjudicating reports of Prohibited Offenses involving students are detailed in [Appendix A](#). A student found responsible for a Prohibited Offense will be subject to disciplinary action up to and including expulsion from the university.

Where there is a finding of responsibility of a violation of this Policy, the Title IX Board may impose one or more sanctions. Sanctions may include any of the sanctions that are available for violations of the university's Code of Student Conduct, including but not limited to expulsion, suspension, deferred suspension, disciplinary probation, letter of warning, cancellation of the *Residence Hall and Dining License Agreement*, counseling evaluation, and other sanctions or restrictions deemed appropriate by the university to address the alleged conduct.

In determining the appropriate sanction(s), the Title IX Board will be guided by a number of considerations, including:

- The severity, persistence or pervasiveness of the Prohibited Offense;
- The nature or violence (if applicable) of the Prohibited Offense;
- The impact of the Prohibited Offense on the Complainant;
- The impact or implications of the Prohibited Offense within the university community;

- Prior misconduct by the Respondent, including the Respondent’s relevant prior disciplinary history, at the university or elsewhere, and any criminal convictions;
- Whether the Respondent has accepted responsibility for the Prohibited Offense;
- The maintenance of a safe, nondiscriminatory and respectful environment conducive to learning; and
- Any other mitigating, aggravating, or compelling factors.

**ii. Allegations Where the Accused Party is an Employee**

The procedures for responding to, investigating and adjudicating reports of Prohibited Offenses by Northeastern employees are detailed in [Appendix B](#).

The Office for Institutional Diversity and Inclusion (“OIDI”) Grievance Procedures govern the investigation and adjudication of allegations involving *only* employees (i.e. where both the victim and the accused party are employees). Any dispute regarding the applicable procedures for adjudication (e.g. where an Accused Party is both an employee and student) will be resolved in the sole discretion of the Title IX Coordinator.

An employee found responsible for a Prohibited Offense will be subject to disciplinary action up to and including separation from the university.

**iii. Allegations Where the Accused Party is Both a Student and an Employee**

If there is a question as to the predominant role of the Accused Party, the Title IX Coordinator will determine which of the procedures applies based on the facts and circumstances, including which role predominates in the context of the Prohibited Offense. Further, where an Accused Party is both an employee and student, they may be subject to any of the sanctions applicable to students and employees.

**iv. Allegations Where the Accused Party is a Third Party**

The university’s ability to take appropriate corrective action against a Third Party will be determined by the nature of the relationship of the Third Party to the university. The Title IX Coordinator will determine the appropriate manner of resolution consistent with federal law, guidance, and this Policy.

When a Third Party is a respondent, NUPD or local enforcement will investigate the allegations. The university will assist the Victim in making a report to the appropriate law enforcement agency with jurisdiction over the incident, and will provide appropriate interim, remedial and protective measures as well as ongoing assistance to the Victim to facilitate their participation in the criminal process.

### **O. Standard of Review**

The university utilizes a “preponderance of the evidence” (more likely than not that a policy violation occurred) standard in the adjudication of Prohibited Offenses.

### **P. Consent, Incapacitation and Coercion**

#### **i. Consent**

Sexual activity requires Consent from all involved parties. Consent must be freely given, without physical force, threats, intimidating behavior, duress, or coercion. Silence, a lack of resistance, previous sexual relationships or experiences and/or a current relationship may not, in itself, constitute Consent. The initiator, or the person who wants to engage in the specific sexual activity, must obtain Consent from the partner(s) for each sexual act. Each participant may be an initiator at different points of sexual activity. If confusion or ambiguity arises during sexual activity, participants are encouraged to stop and clarify a mutual willingness to continue that activity.

A person’s initiation of a sexual act constitutes Consent to that act, but not necessarily to subsequent acts. Consent to sexual activity may be withdrawn at any time and the withdrawal must be communicated in mutually understandable words and/or actions; if so, sexual activity must cease immediately. Consent may never be given by minors (in Massachusetts, minors are those not yet 16 years of age), mentally disabled persons, or those who are incapacitated as a result of intoxication by alcohol or other drug consumption (voluntary or involuntary), or those who are unconscious, unaware, or otherwise physically helpless.

Engaging in sexual activity while under the influence of alcohol or drugs may create ambiguity for either party as to whether Consent has been sought or given. A person who has consumed alcohol and/or drugs still has a responsibility to obtain Consent for any sexual activity with another person(s). *Being impaired by alcohol or other drugs is no defense to any violation of this Policy.*

## ii. Incapacitation

A person who is incapacitated is unable, temporarily or permanently, to give Consent to sexual activity because of mental or physical helplessness, sleep, unconsciousness, or lack of awareness that sexual activity is taking place. A person may be incapacitated as a result of the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition.

Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking alcohol or using drugs. The impact of alcohol, medication, and other drugs varies from person to person. Although every individual may manifest signs of incapacitation differently, typical signs could include, but are not limited to:

- confusion or lack of understanding;
- disorientation to place, time and/or location;
- vomiting;
- incontinence; and/or
- unconsciousness.

A person who is incapacitated may not be able to understand some, or all, of the following questions:

- “Do you know where you are?”
- “Do you know how you got here?”
- “Do you know what is happening?”
- “Do you know whom you are with?”

For purposes of evaluating Consent, the university considers two questions:

- Did the person initiating sexual activity know that their partner was incapacitated? If not,
- Should a reasonable person in the same situation have known that their partner was incapacitated?

If the answer to either of these questions is “yes,” Consent was absent.

### **iii. Coercion**

A person subject to Coercion is unable to give Consent to sexual activity. In evaluating whether coercion was used, the university will consider: (1) the frequency of the application of the pressure, (2) the intensity of the pressure, (3) the degree of isolation of the person being pressured, and (4) the duration of the pressure.

Coercion can include a wide range of behaviors, including severe and/or pervasive intimidation, manipulation, threats, and blackmail, which causes a person to engage in unwelcome sexual activity.

### **Q. Training of Hearing Board Members**

Title IX Hearing Board members will receive training that includes the university’s responsibilities under university policy, Title IX and the Clery Act. Such trainings shall address, among other things, the impact of trauma on a victim’s ability to recollect specific facts and events, common examples of predatory behavior associated with Prohibited Offenses, the definition of consent, the impact of alcohol and drugs on consent, and the application of the “preponderance of the evidence” standard.

### **R. Confidentiality of University Records**

The university is committed to protecting the privacy of all parties involved in any aspect of this Policy and will not share any such information except on a need-to-know basis for the purposes of investigating and adjudicating the Prohibited Offense and providing access to interim remedial and protective measures. The university will also share information as required by federal, state, or local law or as required by valid subpoena or court order. Victims, Accused Parties, and witnesses who participate in an investigation are also required to maintain confidentiality as noted in this Policy.

### **S. Training and Education for the University Community**

Every member of the university community is responsible for promoting an environment free from Prohibited Offenses. All members of the community are encouraged to take reasonable, safe, and prudent actions to prevent or stop the

commission of Prohibited Offenses. Members who take such actions or who wish to learn more about active bystander prevention are encouraged to access the resources described in this Policy for support and assistance.

The university offers ongoing education to students and employees to promote awareness of Prohibited Offenses. Such education will include definitions of Prohibited Offenses and consent; best practices for risk reduction, evidence preservation, safe and positive bystander intervention; reporting procedures and options; and information concerning rights under Title IX, as described in this Policy.

#### **T. Review of Trends and Effectiveness**

In order to assess the effectiveness of the overall university Title IX training, education, and Prohibited Offense response protocols, the university will annually survey the campus climate, community attitudes, and awareness of its student population regarding sex and gender-based discrimination prohibited by Title IX. The Title IX Coordinating Committee will review the results of its annual survey and make recommendations intended to enhance the effectiveness of the university's Title IX training and education programs, prevention efforts, investigations and adjudication proceedings.

#### **IV. Additional Information**

N/A

#### **V. Contact Information**

##### **A. Campus Contact Information**

*Office for Gender Equity and Compliance* – [northeastern.edu/titleix](http://northeastern.edu/titleix)

West Village A North #106, Boston, MA

617.373.4644 | | [titleix@northeastern.edu](mailto:titleix@northeastern.edu)

*Northeastern University Police Department (NUPD)* – [northeastern.edu/police](http://northeastern.edu/police)

716 Columbus Ave, Boston, MA

Emergency: 617.373.3333 | | Non-Emergency: 617.373.2121

*Office of Institutional Diversity and Inclusion (OIDI)* – [northeastern.edu/oidi](http://northeastern.edu/oidi)

125 Richards Hall, Boston, MA  
617.373.2133 | | [diversity@northeastern.edu](mailto:diversity@northeastern.edu)

*Office of Student Conduct and Conflict Resolution (OSCCR)* – [northeastern.edu/osccr](http://northeastern.edu/osccr)  
204 Ell Hall, Boston, MA  
617.373.4390 | | [osccr@northeastern.edu](mailto:osccr@northeastern.edu)

*University Health and Counseling Services (UHCS)* – [northeastern.edu/uhcs](http://northeastern.edu/uhcs)  
Forsyth Building, Suite 135, Boston, MA  
617.373.2772 | | [uhcs@northeastern.edu](mailto:uhcs@northeastern.edu)

*Center for Spirituality, Dialogue, and Service (CSDS)* – [northeastern.edu/spirituallife](http://northeastern.edu/spirituallife)  
203 Ell Hall, Boston, MA  
617.373.2728 | | [csds@northeastern.edu](mailto:csds@northeastern.edu)

*LGBTQA Resource Center* – [northeastern.edu/titleix](http://northeastern.edu/titleix)  
328 Curry Student Center, Boston, MA  
617.373.2738 | | [lgbtqa@northeastern.edu](mailto:lgbtqa@northeastern.edu)

*Office for Residential Life* – [northeastern.edu/reslife](http://northeastern.edu/reslife)  
4 Speare Commons, Boston, MA  
617.373.2814 | | [reslife@northeastern.edu](mailto:reslife@northeastern.edu)

*Office of the Vice President of Student Affairs* – [northeastern.edu/titleix](http://northeastern.edu/titleix)  
104 Ell Hall, Boston, MA  
617.373.4384 | | [vpsa@northeastern.edu](mailto:vpsa@northeastern.edu)

*Violence Support, Intervention and Outreach Network (ViSION) Resource Center*  
[northeastern.edu/vision](http://northeastern.edu/vision)  
106 St. Stephen Street, Boston, MA  
[vision@northeastern.edu](mailto:vision@northeastern.edu)

## **B. Off-Campus Compliance Reporting Agencies**

*Boston Police Department (BPD)* – [www.boston.gov/departments/police](http://www.boston.gov/departments/police)  
1 Schroeder Plaza, Roxbury Crossing, MA  
617.343.4500 | | [bpi.bpd@cityofboston.gov](mailto:bpi.bpd@cityofboston.gov)

U.S. Department of Education, Office for Civil Rights (OCR) -  
[www2.ed.gov/about/offices/list/ocr/index.html](http://www2.ed.gov/about/offices/list/ocr/index.html)

Massachusetts Office:  
Boston Office  
Office for Civil Rights  
US Dept of Education  
8th Floor  
5 Post Office Square  
Boston, MA 02109-3921

Ph: 617.289.0111  
Fax: 617.289.0150  
TDD: 800.877.8339  
Email: [OCR.Boston@ed.gov](mailto:OCR.Boston@ed.gov)

National Headquarters:  
U.S. Dept of Education  
Office for Civil Rights  
Lyndon Baines Johnson Dept of Education Bldg  
400 Maryland Avenue, SW  
Washington, DC 20202-1100

Ph: 800.421.3481  
Fax: 202.453.6012  
TDD: 800.877.8339  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)

Massachusetts Commission Against Discrimination (MCAD) - [www.mass.gov/mcad](http://www.mass.gov/mcad)

MCAD Boston Headquarters:  
1 Ashburton Place, Suite 601, Boston, MA 02108  
Ph: 617.994.6000 | | Fax: 617.994.6024 | | TTY: 617.994.6196  
Email: [assistanttochairman@state.ma.us](mailto:assistanttochairman@state.ma.us)

*Equal Employment Opportunity Commission (EEOC) –*  
[www1.eeoc.gov/field/boston/index.cfm](http://www1.eeoc.gov/field/boston/index.cfm)

Boston Area Office

John F. Kennedy Federal Building

475 Government Center, Boston, MA 02203

Ph: 1.800.669.4000 | | Fax: 617.565.3196 | | TTY: 1.800.669.6820

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[1] Solely for the purposes of the reporting requirements stated in this policy, this definition of Responsible Employee includes certain student workers who assume roles which other students may reasonably believe obligate that student worker to report allegations of a Prohibited Offense. Those student workers include: Resident Assistants, student-employees in Residential Life, University Health and Counseling Services, New Student Programs, the Northeastern University Police Department, Athletics, the N.U.in Program, a Dialogue of Civilizations program, and an Alternative Spring Break program.

## **Appendix A**

*The protocols outlined below describe the steps the university will take to investigate cases involving allegations of Prohibited Offenses detailed in **The Policy on Rights and Responsibilities Under Title IX**. In the event of any conflict or inconsistency between the Policy and other policies or procedures that may relate to the subject matter hereof, (e.g. procedures listed in the Code of Student Conduct - [www.northeastern.edu/osccr/code-of-student-conduct/](http://www.northeastern.edu/osccr/code-of-student-conduct/)) this Policy shall supersede and apply.*

### **Protocols for Allegations of Prohibited Offenses involving a University Student as the Accused Party**

1. When a Responsible Employee is notified of an alleged Title IX Prohibited Offense, the Responsible Employee will notify the Title IX Coordinator (or designee) for review.
2. The Title IX Coordinator will, in collaboration with appropriate university departments, assess the safety and well-being of the parties involved, as well as potential threats to the university community, and will determine the need for any immediate action or interim measures.
3. Case Managers will be assigned to students who are Victims or Accused Parties. Case Managers will serve as the main point of contact for these individuals in order to provide interim measures and resources.
4. The Title IX Coordinator will initiate a Title IX investigation into the allegations and assign an investigator.
5. Upon initiation of the investigation, the investigator will notify the Victim and the Accused Party of the investigation, provide a summary of the alleged Prohibited Offense, identify potential Policy violation(s), and provide an explanation of the investigation process as described herein.
6. The investigator(s) will request to meet separately with the Victim and the Accused Party for an interview. Either party may choose to participate or decline to participate in the investigation. The investigator(s) may continue to investigate the alleged Prohibited Offense and produce an Investigative Report based on the available information. Both the Victim and the Accused Party will be asked to provide relevant documentary evidence (e.g., photographs, text messages, emails, phone records, receipts, etc.) and the names of any and all relevant witnesses with information about the alleged Prohibited Offense. Witnesses cannot participate solely to speak about an individual's character.

a. Parties involved in the investigation may, under limited and extenuating circumstances, request to submit a written statement instead of participating in an interview with the investigator(s). The Title IX Coordinator will determine whether to include in the Investigative Report information provided in a written statement, taking into consideration the relevance of the information and the rights of the Victim and Accused Party to have equal opportunity to present information and witnesses.

b. The investigation may also include the review of any documentation, reports, video or other items the investigator deems relevant to the allegation.

7. The investigator(s), in consultation with the Title IX Coordinator, has the discretion to determine the relevance of any witness or evidence and may exclude irrelevant, immaterial or unduly prejudicial information in preparing the Title IX Investigative Report.

a. An individual's prior or subsequent sexual activity is not relevant and will not be considered, except for one limited, factual purpose:

i. The Victim and the Accused Party engaged in consensual sexual activity prior or subsequent to the alleged Prohibited Offense, and

ii. The prior or subsequent consensual sexual activity is offered for the sole purpose of demonstrating how consent was communicated between the parties during the consensual sexual activity, as compared to the alleged Prohibited Offense. Such information will not be used for any other purpose.

8. The investigator(s) will provide each interviewed party a written interview summary for review via their university email account. The interviewed party will review the summary and, within two (2) business days of receipt, will confirm the summary's accuracy or provide a written response. Failure to respond within two (2) business days will be considered confirmation of the accuracy of the summary. The investigator(s) will review any written response by an interviewed party and will incorporate information into the Investigative Report deemed relevant in the discretion of the investigator(s).

9. At the conclusion of the investigative process, the investigator(s) will share a summary of the facts gathered during the investigation with the Victim and Accused Party for their review and response. The identities of individuals named in the report may be redacted as deemed necessary in the sole discretion of the

investigator. The parties may submit a written response to the investigator(s) within three (3) business days in order to:

- a. clarify information,
- b. provide an additional explanation,
- c. submit additional questions for the investigator(s) to ask of other parties or witnesses, or
- d. identify any other relevant information for the investigator to consider.

10. If a written response includes new and relevant information, the investigator will revise the summary of facts accordingly and provide the Victim and Accused Party with opportunities to respond to the new information. Thereafter, the investigator(s) will determine if additional investigation is required. Any further investigation will follow the steps above. If no further investigation is needed, the investigator(s) will finalize the Investigative Report.

11. The investigator(s) will submit the Investigative Report to the Title IX Coordinator for their review. The Title IX Coordinator will review the Investigative Report to assess its thoroughness, reliability and impartiality.

12. If the Title IX Coordinator determines that the Investigative Report contains insufficient information to constitute a violation of this Policy, the case will be closed and the decision will be simultaneously communicated to the Victim and the Accused Party by the Title IX Coordinator in writing. There is no appeal of this decision.

- a. Facts established as part of an investigation that reveal conduct that may violate other university policies, procedures or commonly accepted norms of conduct, including, but not limited to the Code of Student Conduct, will be referred to the appropriate office for review.

13. If the Title IX Coordinator determines that the Investigative Report contains sufficient information to constitute a violation of this Policy, the case will be referred by the Title IX Coordinator to the Director of OSCCR (or designee).

- a. In order to protect the privacy of the parties, the Investigative Report forwarded to the Director of OSCCR and reviewed by the Title IX Board will have personally identifiable information replaced with their role in investigation (Affected Party, Accused Party, Witness 1, etc.). Members of the Title IX Board will not know the names of the parties.

14. The Director of OSCCR will send a pre-hearing meeting notice to the university email account of the Victim and the Accused Party when they are Northeastern students. The pre-hearing meeting is between the student and an OSCCR Hearing Administrator to:

- a. Review the Investigative Report that forms the basis of the complaint;
- b. Explain the charges of the Policy violation filed against the Accused Party (from this point on in the process, the Accused Party will be referred to as the Charged Student;
  - i. Victims who elect to pursue disciplinary charges will be referred from this point in the process as the Complainant.
- c. Explain the process for resolving the case, including whether the parties accept or contest the recommended findings of the Investigative Report;
- d. Explain that the Director of OSCCR will appoint a three (3) member Title IX Board; and
- e. Review the process how to challenge participation by any member of the Title IX Board for perceived bias or conflict of interest.

15. The parties can accept or contest the recommended findings of the Investigative Report at the pre-hearing meeting.

- a. If the Charged Student accepts the finding of Responsible, the Title IX Board will review the case to determine sanctions.
- b. If the Complainant accepts the finding of Not Responsible, the case will be closed.
- c. If the Charged Student contests the finding of Responsible or the Complainant contests the finding of Not Responsible, the Title IX Board will review the Investigative Report and hold a Title IX Hearing to determine, using a preponderance of the evidence standard, whether to:
  - i. affirm the recommended findings of Policy violations contained in the Investigative Report;
  - ii. make alternative findings of Policy violations than those contained in the Investigative Report.

16. The Title IX Board, in its discretion, may invite the investigator(s) to attend the Title IX Hearing if they believe it would be helpful to have an opportunity to ask the investigator(s) any questions arising from the Investigative Report.

17. The Complainant and the Charged Student will each have the option to present a written or oral statement to the Board. Such statements or the decision to give an oral statement should be provided to the Director of OSCCR at least five (5) business days prior to the Hearing. However, the Title IX Hearing is not a forum for the parties to present facts, information or witnesses. The parties are expected to provide all relevant facts, information and witnesses to the investigator(s) during the investigation. The Title IX Hearing is an opportunity for the parties to present their arguments as to why the recommended findings of Policy violations in the Investigative Report should or should not be adopted by the Board. Any new information presented at the Title IX Hearing will not be considered by the Board.

18. Either party may request alternative methods for participating in the Title IX Hearing that do not require physical proximity to the other party, including participating through electronic means. This request should be submitted to the Director of OSCCR at least two (2) business days prior to the Hearing.

19. At the conclusion of the Title IX Hearing, the Title IX Board will convene to deliberate and render a decision, by majority vote, regarding whether or not there is a preponderance of the evidence to support the recommended findings in the Investigative Report. No member may abstain.

20. The Director of OSCCR will provide both the Complainant and the Charged Student written notice of the Title IX Board's decision, including the rationale for why a Policy violation was or was not found, and any relevant sanctions. The Director of OSCCR will also explain the appeals process to both parties.

21. The Complainant or the Charged Student may file a written appeal within five (5) business days of the Title IX Board's decision. The written appeal will be provided to the non-appealing party, who may but is not required to provide a response within two (2) business days. OSCCR will appoint a Title IX Appeals Board to review the written appeal to determine whether it meets any of the following grounds for appeal:

- (1) new information not reasonably available by the completion of the investigation,
- (2) procedural error that prevented the appealing party from a fair opportunity to present information and/or witnesses, or
- (3) review of the imposed sanctions based on extraordinary circumstances.

22. If an appeal is granted on the basis of new information, the original Title IX Board will reconvene to determine if the new information alters their original decision. The Director of OSCCR will notify the parties of the Board's decision.

23. If an appeal is granted for procedural error, the process will reset to the point at which the procedural error occurred and proceed from that point.

24. If an appeal is granted based on a review of imposed sanctions, the Director of OSCCR will notify the parties of the decision.

25. The Vice President of Student Affairs reserves the right to review and revise final outcomes in Title IX cases, including if Title IX Coordinator closes a case at Step 13 of this process, as well as any decision by a Title IX Board or Title IX Appeals Board. Any such revision is not subject to appeal.

## **Appendix B**

### **Protocols for Allegations of Prohibited Conduct involving Northeastern Employees as the Accused Party**

1. When a Responsible Employee is notified of an alleged Title IX Prohibited Offense, the Responsible Employee will notify the Title IX Coordinator (or designee) for review.
2. The Title IX Coordinator will, in collaboration with appropriate university departments, assess the safety and well-being of the parties involved, as well as potential threats to the university community, and will determine the need for any immediate action or interim measures.
3. Case Managers will be assigned to students who are Victims or Accused Party. Case Managers will serve as the main point of contact for these individuals in order to provide interim measures and resources.
4. The Title IX Coordinator will initiate a Title IX investigation into the allegations and assign an investigator.
5. Upon initiation of the investigation, the investigator will notify the Victim and the Accused Party of the investigation, provide a summary of the alleged Prohibited Offense, identify potential Policy violation(s), and provide an explanation of the investigation process as described herein.
6. The investigator(s) will request to meet separately with the Victim and the Accused Party for an interview. Either party may choose to participate or decline to participate in the investigation. The investigator(s) may continue to investigate the alleged Prohibited Offense and produce an Investigative Report based on the available information. Both the Victim and the Accused Party will be asked to provide relevant documentary evidence (e.g., photographs, text messages, emails, phone records, receipts, etc.) and the names of any and all relevant witnesses with information about the alleged Prohibited Offense. Witnesses cannot participate solely to speak about an individual's character.
  - a. Parties involved in the investigation may, under limited and extenuating circumstances, request to submit a written statement instead of participating in an interview with the investigator(s). The Title IX Coordinator will determine whether to include in the Investigative Report information provided in a

written statement, taking into consideration the relevance of the information and the rights of the Victim and Accused Party to have equal opportunity to present information and witnesses.

b. The investigation may also include the review of any documentation, reports, video or other items the investigator deems relevant to the allegation.

7. The investigator(s), in consultation with the Title IX Coordinator, has the discretion to determine the relevance of any witness or evidence and may exclude irrelevant, immaterial or unduly prejudicial information in preparing the Title IX Investigative Report.

a. An individual's prior or subsequent sexual activity is not relevant and will not be considered, except for one limited, factual purpose:

i. The Victim and the Accused Party engaged in consensual sexual activity prior or subsequent to the alleged Prohibited Offense, and

ii. The prior or subsequent consensual sexual activity is offered for the sole purpose of demonstrating how consent was communicated between the parties during the consensual sexual activity, as compared to the alleged Prohibited Offense. Such information will not be used for any other purpose.

8. The investigator(s) will provide each interviewed party a written interview summary for review via their university email account. The interviewed party will review the summary and, within two (2) business days of receipt, will confirm the summary's accuracy or provide a written response. Failure to respond within two (2) business days will be considered confirmation of the accuracy of the summary. The investigator(s) will review any written response by an interviewed party and will incorporate information into the Investigative Report deemed relevant in the discretion of the investigator(s).

9. At the conclusion of the investigative process, the investigator(s) will share a summary of the facts gathered during the investigation with the Victim and Accused Party for their review and response. The identities of individuals named in the report may be redacted as deemed necessary in the sole discretion of the investigator. The parties may submit a written response to the investigator(s) within three (3) business days in order to:

a. clarify information,

- b. provide an additional explanation,
- c. submit additional questions for the investigator(s) to ask of other parties or witnesses, or
- d. identify any other relevant information for the investigator to consider.

10. If a written response includes new and relevant information, the investigator will revise the summary of facts accordingly and provide the Victim and Accused Party with opportunities to respond to the new information. Thereafter, the investigator(s) will determine if additional investigation is required. Any further investigation will follow the steps above. If no further investigation is needed, the investigator(s) will finalize the Investigative Report.

11. The investigator(s) will submit the Investigative Report to the Title IX Coordinator for their review. The Title IX Coordinator will review the Investigative Report to assess its thoroughness, reliability and impartiality. The Title IX Coordinator may request more information or additional investigation.

12. If the Title IX Coordinator determines that the Investigative Report contains insufficient information to constitute a violation of this Policy, the case will be closed and the decision will be simultaneously communicated to the Victim and the Accused Party by the Title IX Coordinator in writing. There is no appeal of this decision.

- a. Facts established as part of an investigation that reveal conduct that may violate other university policies, procedures or commonly accepted norms of conduct will be referred to the appropriate office for review.

13. If the Title IX Coordinator determines that the Investigative Report contains sufficient information to constitute a violation of this Policy, the Title IX Coordinator may affirm or alter the recommended findings of Policy violation contained in the Investigative Report. Thereafter, the Title IX Coordinator will inform the Victim and Accused Party of the findings of fact of any Policy violation.

14. The Victim and Accused Party may notify the Title IX Coordinator of their request to appeal the findings of Policy violations within five business days of receiving notice of the recommended findings of fact.

- a. The party must submit an appeal letter specifying the grounds upon which the appeal is based and any supporting materials during that five day window.

The Title IX Coordinator has the discretion to extend the deadline for submission of a letter of appeal. The only accepted grounds for appeal are:

- i. new, relevant information not reasonable available by the completion of the investigation; or
- ii. procedural error that prevented the appealing party from a fair opportunity to present information and/ or witnesses.

Once the appeal materials are submitted, the non-appealing party and the investigator will be notified of the appeal and given an opportunity to provide a response within two (2) business days. An Appeal Officer will be appointed by the Title IX Coordinator to consider the appeal.

- o If an appeal is granted on the bases of new information, the Appeal Officer will refer the matter back to the Title IX Coordinator to determine if the new information alters their original decision.
  - The Title IX Coordinator, the parties, and if required witnesses, may be reconvened to review only the information. The Title IX Coordinator will render a decision based on all the relevant information provided.
- o If an appeal is granted for procedural error, the process will reset to the point at which the procedural error occurred and proceed from that point.

15. At the conclusion of the appeal, both the Victim and Accused Party will be notified, in writing, of the outcome by the Title IX Coordinator, and the Investigative Report will be forwarded to the appropriate office for consideration of findings of fact. Any disciplinary action taken based upon the Investigative Report is governed and controlled by other applicable university policy.