Sexual Misconduct Policy

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NEW ENGLAND LAW | BOSTON

Sexual Misconduct Policy

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I. INTRODUCTION

A. Policy Statement

New England Law | Boston (“New England Law” or “School”) is committed to maintaining a safe and healthy educational and work environment that is free from all forms of sexual misconduct, including sexual assault and sexual harassment, and in which no member of the School community is, on the basis of sex, sexual orientation, or gender (hereinafter understood to include both identity and expression), excluded from participation in, denied the benefits of, or subjected to discrimination in any School program or activity. Gender-based and sexual harassment, including sexual violence, are forms of sex discrimination in that they deny or limit an individual’s ability to participate in or benefit from School programs or activities.

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 the School’s programs or activities. Title IX states:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Additional legal requirements met by this Policy include 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. This Policy does not preclude application or enforcement of other New England Law policies.

As described in more detail below, in this Policy “sexual misconduct” is intended to refer to a broad range of conduct focused on sex and/or gender that may or may not be sexual in nature. Sexual harassment, sexual assault, sexual exploitation, stalking, dating violence and domestic violence are all forms of sexual misconduct prohibited by law, this Policy, the Standards of Conduct and Discipline in the Student Handbook, and the Employee Handbook.

It is the policy of the School to provide educational, preventative and training programs regarding sexual or gender-based harassment; to encourage reporting of incidents; to prevent incidents of sexual and gender-based harassment from denying or limiting an individual’s ability to participate in or benefit from the School’s programs; to make available timely services for those who have been affected by discrimination; and to provide prompt and equitable methods of investigation and resolution to stop discrimination, remedy any harm, and prevent its recurrence. Violations of this Policy may result in the imposition of sanctions up to, and including, termination, dismissal, or expulsion, as determined by the appropriate officials at New England Law.

Retaliation against an individual for raising an allegation of sexual or gender-based harassment, for

1 Harassment that is not sexual in nature but is based on gender, sex- or gender- stereotyping, or sexual orientation is also prohibited by the School’s nondiscrimination policies if it denies or limits a person’s ability to participate in or benefit from educational programs, employment, or services. While discrimination based on these factors may be distinguished from sexual harassment, these types of discrimination may contribute to the creation of a hostile work or academic environment. Thus, in determining whether sexual harassment exists, the School may take into account acts of discrimination based on gender, sex- or gender-stereotyping, or sexual orientation.
cooperating in an investigation of such a complaint, or for opposing discriminatory practices is prohibited. Submitting a complaint that is not in good faith or providing false or misleading information in any investigation of complaints is also prohibited.

Nothing in this Policy shall be construed to abridge academic freedom and inquiry, principles of free speech, or the School’s educational mission.

B. Scope of Policy

This Policy covers sexual misconduct and applies regardless of the complainant’s or respondent’s race, color, religion, national origin, ethnicity, age, gender, sexual orientation, disability, genetic information, military status, or status as a veteran. This Policy applies to students, employees (hereinafter understood to broadly include faculty and non-faculty, and full-time, part-time, and temporary, employees), volunteers, independent contractors and vendors. Sexual Misconduct by non-New England Law employees and guests doing business or providing services on School-owned or leased property, at School-sponsored events and programs, and/or at events and programs on or off-campus that have sufficient ties to the School (e.g., contractors and vendors) is prohibited by this Policy.

Conduct by employees that constitutes Sexual Misconduct in violation of this Policy is considered to be outside the normal course and scope of employment.

Employees of New England Law should also consult the School’s Anti-Harassment Policy (found both in the Faculty Rules and the Employee Handbook) for additional protections that may apply.

The School requires reporting of all incidents of Sexual Misconduct, regardless of the alleged offender’s identity or position. This Policy shall apply to conduct that occurs on School-owned or leased property and at School-sponsored events and programs, and at events and programs on or off-campus that have sufficient ties to the School.

Students shall be responsible for their conduct from the time of matriculation through the awarding of a degree, including periods between terms of actual enrollment, study abroad, or suspension, as well as any post-degree program with sufficient ties to the School, such as bar exam preparation held at New England Law. Employees shall be responsible for their conduct from the time of hire until their employment ends.

The School has the authority to combine violations of different policies, such as those in the Standards of Conduct and Discipline in the Student Handbook, or the Employee Handbook, that are related to the same incident under Title IX review, even though they may not be directly related to Sexual Misconduct. The School encourages individuals who believe they have been subject to any Sexual Misconduct to clearly and promptly notify the Title IX Coordinator or a Deputy Title IX Coordinator (described in Section VI, below). However, once a complaint or investigation is initiated under this Policy, it will supersede all other policies and will be used to resolve any and all other ancillary complaints arising out of the same or related incidents or allegations.

C. Distribution of Policy

As part of the School’s commitment to providing a working and learning environment free from Sexual Misconduct, this Policy shall be distributed widely to the School community. The School will distribute this Policy to the students and employees by appropriate channels of communications, including posting it on an internet or intranet web site and directly notifying all students and employees of how to access
this Policy by an exact URL address or link, and that they may request a paper copy.

The School will make preventive educational materials available to all members of the community and will provide incoming students with a copy of this Policy at a scheduled Title IX informational session as part of their orientation.

II. NOTICE OF NON-DISCRIMINATION

New England Law expressly prohibits discrimination on the basis of race, color, religion, national origin, ethnicity, age, gender, sexual orientation, disability, genetic information, military status, or status as a veteran, or any other basis prohibited by law. For students who have questions about discrimination on the basis of a disability or to file a Section 504 complaint alleging discrimination on the basis of a disability, contact the Director of Student Services at TitleIXCoordinator@nesl.edu. Employees should consult the Employee Handbook for information about the disability-related protections that apply.

III. PROHIBITED CONDUCT

“Sexual Misconduct” is a broad, non-legal term that encompasses a wide range of behaviors, including but not limited to, sexual harassment, sex/gender discrimination, sexual assault, rape, stalking, and relationship violence (including dating and domestic violence). It is a violation of School policy as well as applicable law to commit or to attempt to commit these acts.

It also violates this Policy to retaliate against a person who reports Sexual Misconduct, who assists someone with a report of Sexual Misconduct, or who participates in any manner in an investigation or resolution of a Sexual Misconduct report.

The acts listed as Sexual Misconduct or retaliation in this section are also included to clarify nonexclusive examples of acts which would qualify as gender-based discrimination or harassment or retaliation against those with protected status under Title IX. VAWA identifies four specific complaints that must be listed as violations of a Title IX Policy: Sexual Assault, Dating Violence, Domestic Violence, and Stalking.

Sexual misconduct can occur between strangers or acquaintances, or people who know each other well, including between people who are or have been involved in an intimate or sexual relationship. It can be committed by anyone, regardless of gender, and can occur between people of the same or different sex or gender. This Policy prohibits all forms of sexual misconduct.

Violations of School policy that do not constitute a violation of this Sexual Misconduct Policy, may nevertheless still be prohibited by the Standards of Conduct and Discipline in the Student Handbook, the Employee Handbook, or any other applicable policies. In the case of a true and direct conflict between this Sexual Misconduct Policy and another School policy, this Sexual Misconduct Policy shall control.

A. Sexual Assault (including Rape).

Sexual assault is actual or attempted sexual contact with another person without that person’s consent. Sexual assault includes, but is not limited to:

1. Intentional touching of another person’s intimate parts without that person’s consent; or
2. Other intentional sexual contact with another person without that person’s consent; or
3. Coercing, forcing, or attempting to coerce or force a person to touch another person’s intimate parts without that person’s consent; or
4. Rape, which is penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by a sex organ of another person, without that person’s consent.

B. Sexual Harassment.

Sexual Harassment includes both so-called “quid pro quo” and “hostile environment” sexual harassment. Sexual harassment includes same sex harassment; this policy applies equally when the harasser and the victim are the same sex, and whether or not the harasser is gay or lesbian. Unwelcome sexual advances, unwelcome requests for sexual favors, or other unwelcome physical or verbal conduct directed at a person because of his or her sex or of a sexual nature constitutes sexual harassment when:

1. Submission to, or rejection of, such advances, requests or conduct is made either explicitly or implicitly a term or condition of a student’s status or evaluation, or of an employee’s employment or, is used as a basis for an academic or other decision affecting a student, or as a basis for an employment or other decision affecting an employee; or

2. Such advances, requests, or conduct have the purpose or effect of unreasonably interfering with a student’s academic performance or educational experience or an employee’s work performance by creating an intimidating, hostile, humiliating or sexually offensive academic or working environment. For a one-time incident to rise to the level of sexual harassment, it must ordinarily be severe.

While it is not possible to list all circumstances that may constitute sexual harassment, the following are some examples of conduct which may constitute sexual harassment. In any particular case, whether the conduct constitutes sexual harassment will depend upon the totality of the circumstances including the severity, frequency, and pervasiveness of the conduct:

- Unwelcome sexual advances or propositions, whether or not they involve physical touching or not;
- Sexual epithets, jokes, written or oral references or sexual conduct, or gossip regarding one’s sex life;
- Comments about an individual’s body, appearance, or clothing;
- Comments about an individual’s sexual activity, deficiencies, or prowess;
- Displaying of sexually suggestive objects, pictures, cartoons;
- Actions such as leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- Inquiries into or discussions of one’s sexual experiences;
- Observing, photographing, videotaping, posting, or making other visual or auditory records of sexual activity or nudity, where there is a reasonable expectation of privacy, without the knowledge and consent of all parties; or
- Sharing visual or auditory records of sexual activity or nudity without the knowledge and consent of all recorded parties and recipient(s)

Other verbal, nonverbal, graphic, or physical conduct may create a hostile environment if the conduct is
sufficiently persistent, pervasive, or severe so as to deny a person equal access to the School’s programs or activities. Whether the conduct creates a hostile environment may depend on a variety of factors, including: the degree to which the conduct affected one or more person’s education or employment; the type, frequency, and duration of the conduct; the relationship between the parties; the number of people involved; and the context in which the conduct occurred.

C. Sexual Exploitation.

**Sexual exploitation** occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person without that person’s consent.

Examples of behavior that could rise to the level of sexual exploitation include:

-Prostituting another person;
-Recording images (e.g., video, photograph) or audio of another person’s sexual activity, intimate body parts, or nakedness without that person’s consent;
-Distributing images (e.g., video, photograph) or audio of another person’s sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure; and,
-Viewing another person’s sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person’s consent, and for the purpose of arousing or gratifying sexual desire.

D. Dating Violence.

**Dating violence** is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship will be determined based on a consideration of the following factors: 1) the length of the relationship, 2) the type of relationship, and 3) the frequency of interaction between the persons involved in the relationship.

E. Domestic Violence.

**Domestic violence** is defined as abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship.

F. Stalking.

**Stalking** includes conduct directed at a specific person that would cause a reasonable person to—1) fear for his or her safety or the safety of others; or 2) suffer substantial emotional distress. Such behaviors or activities may include, but are not limited to non-consensual communications (i.e., face-to-face, telephone, email, and social media), threatening or obscene gestures, surveillance, or showing up outside the targeted individual's classroom, residence or workplace. Under Massachusetts law, stalking means “(1) willfully and maliciously engag[ing] in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress, and (2) mak[ing] a threat with the intent to place the person in imminent fear of death or bodily injury…”

2 M.G.L. c. 265, § 43.
G. Retaliation.

Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment or education. These actions violate this Policy when they are taken in response to a person reporting a complaint of Sexual Misconduct, assisting another in making such a complaint, or participating in any manner in an investigation or resolution of a Sexual Misconduct report.

IV. IMPORTANT CONCEPTS AND DEFINITIONS

A. Consent.

Consent must be informed and voluntary, and can be withdrawn at any time. Consent can be given by words or actions as long as those words or actions create mutually understandable permission regarding the scope of sexual activity. There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent.

Silence or absence of resistance does not imply consent. Past consent to sexual activity with another person does not imply ongoing future consent with that person or consent to that same sexual activity with another person.

If a person is mentally or physically incapacitated or impaired so that he or she cannot understand the fact, nature, or extent of the sexual situation, there is no consent; this includes impairment or incapacitation due to alcohol or drug consumption that meets this standard, or being asleep or unconscious.

Effect of drugs and alcohol on consent: Individuals should be aware of, and carefully consider, the potential consequences of the use of alcohol or drugs. Alcohol and other drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and affirmatively given. If there is a question about whether someone consented to sexual activity after consuming drugs or alcohol, the School will examine the issue from the perspective of a reasonable person. Specifically, the School will consider whether the respondent reasonably should have known about the impact of alcohol and other drugs on the complainant’s ability to give consent.

B. Incapacitation.

Incapacitation is the inability, temporarily or permanently, to give consent, because the person is mentally and/or physically helpless due to drug or alcohol consumption, either voluntarily or involuntarily, or the person is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. Some signs of incapacitation may include, but are not limited to, lack of control over physical movements (e.g., stumbling, falling down), lack of awareness of circumstances or surroundings, the inability to speak or communicate orally, or the inability to communicate for any reason.

It is a violation of this Policy and Massachusetts law to engage in sexual activity with a person who is incapacitated, regardless of whether the person appeared to be a willing participant. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person’s level of intoxication and potential incapacitation.
C. Force.

The use of force to cause someone to engage in sexual activity is, by definition, non-consensual contact, and is prohibited. Force may include words, conduct, or appearance. Force includes causing another’s intoxication or impairment through the use of drugs or alcohol. Under this Policy, force includes the use of any of the following: physical force, violence, or use of a weapon; threats; intimidation and implied threats; and coercion (i.e., forcing one to act based on fear of harm to self or others. Means of coercion may include, but are not limited to, pressure, threats, or emotional intimidation).

D. Miscellaneous Definitions.

- Complainant: The person making the allegations of sexual misconduct.
- Respondent: The person against whom a complaint of sexual misconduct has been made.
- Reporter: A person who has information that sexual misconduct may have been committed by a New England Law student, employee, volunteer, independent contractor and/or vendor, and who initiates a complaint.

V. ADDITIONAL ENFORCEMENT INFORMATION

The federal Equal Employment Opportunity Commission (“EEOC”) and the Massachusetts Commission Against Discrimination (“MCAD”) investigate complaints of unlawful harassment in employment. The U.S. Department of Education Office for Civil Rights (“OCR”) investigates complaints of unlawful Sexual Misconduct by students in educational programs or activities. These agencies may serve as neutral fact finders and attempt to facilitate the voluntary resolution of disputes with the parties. For more information, contact the nearest office of the EEOC, MCAD or OCR.

VI. TITLE IX COORDINATORS AND RESOURCES

A. Title IX Coordinator

The School has designated the Director of Student Services to serve as the School’s Title IX Coordinator (“Title IX Coordinator”). The Title IX Coordinator is responsible for implementing and monitoring Title IX compliance on behalf of New England Law. The Title IX Coordinator’s specific responsibilities include, but are not limited to, coordinating training, education, and communications; providing prompt and effective response to reports of Sexual Misconduct in accordance with this Policy; initiating investigations of alleged Sexual Misconduct; maintaining records of reports of Sexual Misconduct, including records of investigations, voluntary resolutions, and disciplinary action, as appropriate; and identifying and addressing any patterns or systemic problems that arise during the review of Sexual Misconduct complaints.

Any inquiries regarding Title IX, VAWA, or this Policy should be directed to either the Title IX Coordinator or any of the Deputy Title IX Coordinators identified in the following Section.

The Title IX Coordinator and the Deputy Title IX Coordinators (collectively, the “Coordinators”) also qualify as campus security authorities (“CSA”) under federal law. A CSA is “[a]n official of an institution who has significant responsibility for student and campus activities.” These Coordinators will be available to meet with students, employees, and others regarding issues relating to Title IX, VAWA, and this Policy.
Inquiries, Title IX and VAWA complaints should be referred to:

Title IX Coordinator
Director of Student Services
New England Law | Boston
46 Church Street
Boston, MA 02116
617-422-7401
TitleIXCoordinator@nesl.edu

Inquiries about the application of Title IX may also be directed to:

Boston Office for Civil Rights
U.S. Department of Education
8th Floor
5 Post Office Square
Boston, MA 02109-3921
Telephone: (617) 289-0111
Facsimile: (617) 289-0150
Email: OCR.Boston@ed.gov

B. Deputy Title IX Coordinators

Deputy Title IX coordinators are responsible for assisting the Title IX Coordinator in implementing and monitoring Title IX compliance at New England Law and for notifying the Title IX Coordinator of any alleged or suspected violations of this Policy and the resolution of such alleged or suspected violations, regardless of whether a complaint is filed.

The Deputy Coordinators are listed below.

For Complaints By/Or Against Students or Employees:
Associate Dean
New England Law | Boston
154 Stuart Street
Boston, MA 02116
617-422-7230
DeputyCoordinator-Students@nesl.edu

For Complaints By/Or Against Employees
Human Resources Consultant
New England Law | Boston
46 Church Street
Boston, MA 02116
617-422-7285
DeputyCoordinator-Employees@nesl.edu
C. Responsible Employee

While Sexual Misconduct can be reported to any of the agencies listed online in the New England Law Notice re Sexual Assault and Harassment Resources, Title IX regulations require that these reports be made to a responsible employee (“Responsible Employee”). A Responsible Employee is an employee who has the authority to redress or a duty to report incidents of Sexual Misconduct. When an individual tells a Responsible Employee about an incident of Sexual Misconduct, the individual has the right to expect the School to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably. At New England Law, Responsible Employees are any of the Coordinators identified above in this Section. If complaints are made to anyone else, the complainant risks the possibility that it will not come to the attention of the appropriate School official, and therefore not be acted upon.

In addition to contacting a coordinator, individuals who have experienced Sexual Misconduct may contact proper law enforcement authorities, including the local police department. The Title IX Coordinators are obligated to contact the law enforcement agency with jurisdiction over New England Law when the victim has been exposed to sexual violence or bodily harm.

VII. REPORTING A COMPLAINT

A. Reporting Sexual Misconduct or Retaliation

All members of the New England Law community are strongly encouraged to contact the individuals designated below if they observe or encounter any form of sexual misconduct, such as gender-based discrimination or harassment, domestic violence, dating violence, sexual assault, or stalking. They should also report claims of retaliation. This includes conduct by employees, students, or third parties. Reports of Sexual Misconduct and retaliation should be brought as follows;

- For claims by or against students: Concerns should be brought to the Title IX Coordinator or to a Deputy Title IX Coordinator responsible for student complaints (i.e., the Director of Student Services or an Associate Dean), as identified in Section VI, above.
- For claims by or against employees: Concerns should be brought to the Deputy Title IX Coordinators (i.e., an Associate Dean or the Human Resources Consultant), as identified in Section VI, above.
- For claims against the Dean: Concerns should be brought to the Chairman of the Board of Trustees.
- For claims against third parties: Concerns should be brought to the Title IX Coordinator or a Deputy Title IX Coordinator, as identified in Section VI, above.

B. Prompt Reporting Encouraged

Complaints of Sexual Misconduct and retaliation should be filed promptly so that the School can effectively address the issue. The School will accept and investigate untimely complaints, but an undue delay in reporting may affect the quality or preservation of evidence or witness testimony that would have been available and might affect the School’s ability to proceed with the investigation. Where appropriate, complainants are strongly encouraged to report incidents to the local police department and campus security and are also encouraged to contact the local victim/survivor services office, counseling centers, and health care providers for appropriate action. Employees who have experienced or observed
or otherwise been made aware of conduct that they believe is contrary to this Policy are encouraged to promptly make a report. Faculty, managers, and department heads who have experienced, observed or otherwise been made aware of conduct that they believe is contrary to this Policy have an obligation to promptly make a report.

C. Other Triggers for an Investigation

New England Law is committed to investigating known or suspected violations of this Policy. In addition to direct or third-party complaints, some common triggers for an investigation may include: a student filing a police report with local police who alert the School, parents calling an administrator to complain, or an administrator receiving an anonymous voicemail, email, or written message alleging Sexual Misconduct. New England Law’s ability to investigate in a particular situation, or the extent of the investigation in any given situation, may be affected by any number of factors, including whether the complainant is willing to file a complaint or to consent to an investigation, the location where the alleged conduct occurred, and New England Law’s access to information relevant to the alleged violation of this Policy. All parties are expected to fully cooperate with the School’s efforts to enforce this Sexual Misconduct Policy.

D. Confidentiality

Where a complainant requests to remain anonymous or that no formal action be taken, the School will evaluate whether we can honor this request. This determination will be made by the Title IX Coordinator where a student is making this request and by an appropriate Deputy Title IX Coordinator where an employee is making this request, after consultation with the Office of the Dean.

The School must balance a request for confidentiality with its obligations to provide a safe and non-discriminatory environment for all community members and to afford a respondent fundamental fairness by providing notice and an opportunity to respond before any action is taken against a respondent. There may be times when the School’s obligation to act may override any confidentiality concerns.

When weighing a complainant’s request for confidentiality or that no investigation, hearing or discipline be pursued, the School will consider a range of factors, including the following:

1) The increased risk that the respondent will commit additional acts of Sexual Misconduct, such as: whether there have been other Sexual Misconduct complaints about the same respondent, whether the respondent has a history of violence, and whether the respondent threatened further Sexual Misconduct or other violence against the complainant or others.
2) Whether the Sexual Misconduct was committed by multiple perpetrators.
3) Whether the Sexual Misconduct was perpetrated with a weapon.
4) Whether the School possesses other means to obtain relevant evidence of the Sexual Misconduct (e.g. security cameras or physical evidence).
5) Whether the complainant’s report reveals a pattern of perpetration (e.g. via illicit use of drugs or alcohol) at a given location or by a particular group.
6) Whether the complainant’s safety is at risk.

The presence of one or more of these factors, or other factors unique to the situation, could lead the School to investigate and, if appropriate, pursue discipline or corrective actions. In these and other situations, the School may have an obligation to act even if a complainant requests confidentiality.

In the event that the circumstances of the complaint dictate a full investigation, the investigation will be
conducted in a way as to maintain confidentiality to the extent possible under the circumstances. However, the School community should understand that it is not always possible to keep complaints confidential during an investigation, since investigations include private interviews with the complainant, with any witnesses, and with the respondent. Subject to these limitations, the School will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. The School’s ability to investigate or take action may be limited based on the nature of the request by the complainant.

If the individual decides not to file a complaint with the School, the School encourages the individual, as appropriate, to seek out the available medical and mental health resources listed in the New England Law Sexual Assault/Sexual Misconduct Notice. Individuals who wish to make a complaint at a later date may contact any of the Coordinators at any time. Please note that a delay in reporting could affect the School’s ability to gather information and evidence to determine whether a person is responsible for Sexual Misconduct.

For a list of confidential and non-confidential resources, please review the New England Law Notice re Sexual Assault and Harassment Resources. It includes a list of off-campus counselors, advocates, and health care providers that will generally maintain confidentiality and not share information with the School unless the complainant requests the disclosure and signs a consent or waiver form.

Reports that are made anonymously or by third parties may not initiate the formal complaint process. However, Title IX requires the School to investigate all incidents about which the School knows or has reason to know in order to protect the health and safety of the School community. The School may undertake an initial assessment even in cases where the alleged victim and/or complainant choose not to cooperate or participate. As necessary, the School reserves the right to initiate a complaint, to serve as complainant, and to initiate conduct proceedings without a formal complaint by the victim or complainant.

E. Notice of Rights for Sexual Misconduct Complainants

The School will provide a written explanation of available rights and options, including procedures to follow, when the School receives a report that a student or employee has been involved in an incident of Sexual Misconduct or a VAWA complaint, whether the offense occurred on- or off-campus or in connection with any School-sponsored program or event. The Notice of Rights is available at https://student.nesl.edu/students/student_handbook.cfm.

F. Protections for Those Reluctant to Report Based on Potential Violations

Students and employees may be reluctant to report incidents because of concerns that their own behavior may be a violation of School policies. The School’s primary concern is student and employee safety. Any other rules violations will be addressed separately from the Sexual Misconduct allegation. The use of alcohol or drugs does not make the complainant at fault for Sexual Misconduct. In appropriate circumstances, a student who is found to have engaged in excessive consumption of alcohol or drugs may be offered a chance to get medical or psychological help in lieu of disciplinary sanctions. Although School policy violations cannot be overlooked, the School will consider the positive impact of reporting an incident involving the Sexual Misconduct Policy when determining the appropriate response to other policy violations. In such cases, any possible negative consequences for the reporter of the problem should be evaluated against the possible negative consequences of not reporting the incident.
VIII. RESPONDING TO A COMPLAINT

A. General Principles

Each complaint that alleges a violation of this Policy will usually be assigned to an individual (the “Officer”) who will be responsible for responding to the complaint. The Officer may be the Title IX Coordinator, a Deputy Title IX Coordinator, or any other person designated by the Title IX Coordinator or Deputy Title IX Coordinator in consultation with the Office of the Dean. Once the Officer has notice of the claim of Sexual Misconduct, the Officer shall take immediate and appropriate steps as discussed further below.

B. Initial Assessment

Upon receipt of a report of a Policy violation, in most cases, the Officer will conduct an initial assessment. The first step of the assessment will usually be a preliminary meeting with the complainant. The purpose of the preliminary meeting is to gain a basic understanding of the nature and circumstances of the report; it is not intended to be a full interview. Prior to the interview, the person should complete the complaint form. While doing so is not required, it will greatly assist the Officer in more efficiently handling the individual’s concerns. The complainant should either bring the completed form to the interview or one will be provided at the initial meeting. At this meeting, the complainant will be provided with information about resources, procedural options and interim measures.

The goal of the initial assessment is to decide whether to proceed with an investigation and also to determine whether any interim measures, as discussed in the next section, are appropriate. As part of the initial assessment, the Officer may meet and discuss the allegations with the respondent. After the initial assessment, the Officer will inform the complainant as to whether there will be an investigation of the complaint pursuant to Section IX, below, or not.

If an investigation is initiated, the complainant should provide a written complaint to the School regarding the alleged violations, if the person has not already done so.

C. Interim Measures

At any time during the process, the Officer, after consultation with the Office of the Dean (and the Title IX Coordinator if there is a student involved), may impose reasonable and appropriate interim measures designed to eliminate the reported hostile environment and protect the parties involved (“Interim Measures”). Interim Measures may be imposed regardless of whether discipline or corrective measures are sought by the complainant or the School. All individuals are encouraged to report concerns about the failure of another individual to abide by any restrictions imposed by an Interim Measure. The School will take responsive action to enforce the Interim Measures.

The School reserves the right to take immediate action and impose restrictions on any person accused of violating this Policy, or to take any other Interim Measures it deems appropriate, pending the outcome of an investigation and/or disciplinary proceedings. If the School decides at any point that the well-being of a student or employee is at stake, an interim suspension may be imposed on an individual who is suspected of violating this Policy or otherwise poses a risk of safety to others, until the investigation and/or hearing can be completed. This action assumes no presumption or determination of guilt and the investigation will be completed as soon as possible.

At any time during the investigation, New England Law may implement the following Interim Measures:
• Placing an employee on paid or unpaid administrative leave.
• Removing a student from campus and/or current classes.
• Providing access to counseling services.
• Issuing on-campus No Contact Orders.
• Modifying class schedules, rescheduling of exams and assignments.
• Limiting time and access to campus (including reduced access to the library and other School buildings).
• Banning individuals from campus except for classes and required school activities.
• Changing work schedules or job assignments.
• Encouraging voluntary leaves of absence.
• Providing an escort to ensure safe movement between classes and activities.
• Placing a student on imposed leave or separation.
• Any other remedy tailored to the involved individuals to achieve the goals of this Policy.

The School may use these Interim Measures in any combination thereof, or create new measures as needed. The School will take responsive action to enforce the Interim Measures.

D. Sexual Misconduct Involving Bodily Harm

In the event the School has received a report of Sexual Misconduct involving bodily harm, the School must determine, consistent with state or local law, whether appropriate law enforcement or other authorities should be notified. The person reporting the Sexual Misconduct may choose to file a criminal complaint against the respondent. Any pending criminal investigation or criminal proceeding may have some impact on the timing of the School’s investigation, but the School will commence its own investigation as soon as is practicable under the circumstances. New England Law reserves the right to commence and/or complete its own investigation prior to the completion of any criminal investigation or criminal proceeding.

E. Informal Resolution/Mediation

The initial assessment may result in informal resolution of the complaint without the need for a formal investigation. In general, allegations may be resolved using an informal resolution process if (i) the School determines, in its discretion, that such a process would be appropriate; and (ii) both the complainant and respondent agree to participate. The parties to any such informal process will not be required to deal directly with one another. Instead, one or more representatives, selected by the School, may arrange for or facilitate informal resolution measures between the parties. The parties must be notified of the right to end the informal process at any time during the complaint process. If the complaint involves a student, and only with advance approval of the Title IX Coordinator, the parties may be entitled to advisors who may attend the mediation or other informal resolution process. Allegations of Sexual Assault, however, may not be resolved using mediation or any other informal resolution process that involves direct contact between the parties.

IX. INVESTIGATING A COMPLAINT WHERE DEEMED WARRANTED

A. Generally

The Officer will conduct or arrange for an investigation into the alleged incident(s) if and only if the determination has been made to proceed with such investigation under Section VIII(B). The investigation will be conducted promptly in a fair and expeditious manner and subject to the
confidentiality parameters discussed above. The procedures may be subject to change based on the facts of each situation.

The designated investigator (“Investigator”) is primarily responsible for investigating reports and complaints of violations of this Policy. With the exception of personal advisors for complaints of Sexual Assault as detailed in subsection B below, attorneys for the parties will not be allowed to participate in the investigation. The Investigator shall in most cases:

- Conduct a fact-finding inquiry or investigation into the complaint, including appropriate interviews and meetings with the complainant, the respondent, and with witnesses named by both the complainant and respondent.
- Contact parties and witnesses as needed, such as when evidence is disputed or when further information is required.
- Inform the witnesses and other involved individuals of the confidentiality requirements and the prohibition against retaliation.
- Create, gather and maintain investigative documentation, as appropriate.
- Disclose appropriate information to others only on a need to know basis, consistent with state and federal law, and provide if applicable a data privacy notice in accordance with state law.
- Handle all data in accordance with applicable federal and state privacy laws.
- Apply a preponderance of evidence standard to determine whether there has been a violation of Title IX or VAWA. This means that, if the Investigator finds it is more likely than not that the alleged misconduct occurred, the Investigator will conclude that there was a violation of this Policy.

During the course of the investigation, the respondent will be provided with a copy of the complaint or a summary of the allegations and will have the option to prepare a written response to the alleged violations and may assert any cross-complaints. If the Officer decides it would be appropriate, any responses and cross-complaints from the respondent or a summary of that information will be provided to the complainant.

The Investigator should keep the Officer informed of the progress of the investigation and confer with the Officer over the course of the investigation.

B. Assistance from Complainant/Respondent and Right to Advisor for Claims of Sexual Assault

To help ensure a prompt and thorough investigation, complainants are encouraged to provide as much of the following information as possible:

- The name, department, and position of the person or persons allegedly causing Sexual Misconduct or retaliation.
- A description of any relevant incident(s), including the date(s), location(s), and the presence and identities/names of any witnesses.
- Any evidence obtained or preserved that they have in their possession or knowledge.
- The alleged effect of the incident(s) on the complainant’s academic standing, educational benefits or opportunities, position of employment, salary, employee benefits, promotional opportunities, or other terms or conditions of employment.
- The names of other students or employees whom the complainant knows to have been subject to the same or similar Sexual Misconduct, or retaliation.
• Any issues or questions that the complainant wants to bring to the attention of the investigator.
• Any steps the complainant has taken to try to stop the Sexual Misconduct or retaliation.
• Any other information the complainant believes to be relevant to the alleged Sexual Misconduct or retaliation.

The respondent is also encouraged to provide as much of the above information as possible that relates to or may be applicable to the respondent in connection with the investigation, as well as any other additional information, including:

• Any information or documentation providing support for any defense or counterclaim.
• The identity or name of any witnesses who can testify on the respondent’s behalf or who can contradict the complainant’s allegations.
• The identity or name of any witnesses who can testify as to the complainant’s competence, including whether or not the complainant was under the influence of any drugs or alcohol.
• Any other information the respondent believes to be relevant to the allegations, defenses or counterclaims.

For complaints of Sexual Assault: Under VAWA, which applies to claims of sexual assault, the parties are entitled to have a personal advisor or support person (“Advisor”) of their choice, at their expense, and may be accompanied by the Advisor to any meeting the party is required to attend. An Advisor may only consult and advise his or her advisee, but not speak for the advisee at any of the meetings. This requirement applies solely to claims of Sexual Assault and does not apply to other claims of Sexual Misconduct that arise solely under Title IX.

C. Investigation Report

After the investigation has been completed, the Investigator shall prepare an investigation report. The report should, at a minimum, include a statement of the allegations and issues, the position of the parties, a summary of evidence, findings of fact, and a determination by the Investigator whether this Policy has been violated. The Investigator should explain the reasoning behind any conclusions. The Investigator should provide the report in draft form to the Officer, who may ask for clarification of certain points or for supplemental investigation to occur before the report is finalized. The report is a confidential report that is not subject to disclosure unless at the School’s option. In some cases, the investigation may be conducted by an attorney and subject to attorney-client privilege.

X. POST INVESTIGATION

A. Review and Determination by Office of the Dean or Dean’s Designee(s)

The investigative report will be reviewed, as appropriate, by the Dean and/or Dean’s designee(s) (or by the Chairman of the Board of Trustees if the respondent is the Dean) for a final determination as to whether this Policy has been violated or whether the matter warrants disciplinary action. Where the matter involves a student, the Title IX Coordinator shall participate in the review. The School may determine (a) that there has been no violation(s) under this Policy, (b) that there is insufficient evidence to conclude that there has been a violation under this Policy, or (c) determine that a violation has occurred. The School may also ask for the Investigator or the Officer to take additional steps before finalizing the outcome.
B. Disciplinary Actions for Violations of This Policy

Students who are found to have violated this Policy will be subject to disciplinary action, up to and including expulsion or dismissal. The Dean and/or Dean’s designee(s), with input from the Title IX Coordinator, should determine the discipline to be imposed on the student, subject to the appeal process described below.

Non-tenured faculty members or staff members who are found to have violated this Policy will be subject to disciplinary action, up to and including termination of employment. The Dean and/or the Dean’s designee(s) will determine the appropriate level of discipline, which decision shall be final.

Tenured faculty members who are found to have violated this Policy will be subjected to disciplinary action, up to and including withdrawal of tenure and termination of employment. The Dean or Dean’s designee(s) may unilaterally impose discipline at a level below the withdrawal of tenure, which decision shall be final. Where the discipline to be imposed rises to the level of withdrawal of tenure, the matter will be subject to Rule 4.8 of the Faculty Rules, which provides tenured faculty members with a right to an evidentiary hearing before the appropriate faculty committee, with any recommendation of that committee to withdraw tenure subject to a final decision by the Board of Trustees.

If the Dean is found to have violated this Policy, the Chairman of the Board of Trustees may impose discipline up to and including termination of employment, except that if the Dean is a tenured faculty member, tenure may not be withdrawn without following Rule 4.8 of the Faculty Rules.

Guests and other third parties who are found to have violated this Policy will be subject to corrective action deemed appropriate by the Dean, which may include removal from the campus and termination of any applicable contractual or other arrangements.

In instances where the School is unable to take disciplinary action in response to a violation of this Policy because a complainant insists on confidentiality or for some other reason, the School will nonetheless pursue, as appropriate, other steps to limit the effects of the conduct at issue and prevent its recurrence.

Discipline and/or corrective actions will also be appropriate if an investigation results in a finding that the complainant has knowingly made a false accusation.

C. Written Notice to Complainant and Respondent

The School will provide written notification to the complainant and the respondent involved of the outcome (i.e., whether a violation of this Policy has been determined to have occurred) within fourteen (14) calendar days after the final determination by the Dean and/or Dean’s designee(s), unless the School determines that additional time is required. This notice shall be issued contemporaneously to both parties to the extent practicable. Where, for example, the School decides to meet with the parties and provide written notice at that time, the meetings should occur as close in time as practicable. Neither the complainant nor respondent will be prohibited from disclosing the outcome of an investigation.

Where the respondent is a student:

- If sanctions or corrective actions are to be imposed based on a finding of a Policy violation, the complainant and respondent will be informed of the supplemental procedures (as set forth below).
• The School will generally disclose to the complainant information about sanctions or corrective actions only if these relate directly to the complainant (e.g., a No Contact Order and any other notice required under Title IX), due to applicable privacy laws such as the Family Educational Rights and Privacy Act (FERPA). If the matter involves sexual violence, the applicable laws allow the School to disclose disciplinary sanctions even if they do not directly relate to the complainant.

Where the respondent is an employee:

• The complainant will generally not be informed of discipline to be imposed on the respondent in order to protect the respondent’s privacy rights.
• If the recommended discipline involves the withdrawal of tenure, the respondent will be notified of the supplemental procedures (as set forth below). If the matter turns into a disciplinary hearing, the complainant will be advised of the hearing and have an opportunity to participate.

D. Supplemental Procedures Where the Accused Harasser Is a Student

In cases where the School has found a violation of this Sexual Misconduct Policy, either the complainant or respondent can appeal the level of discipline to the Discipline Committee by submitting, within 20 days of learning of the outcome of the investigation, a written statement to the Office of the Dean explaining why the discipline should be changed, including submitting any supporting materials as are necessary. If there is no appeal, the recommended discipline will go into effect.

Where there is an appeal: The Office of the Dean will provide a copy of the appealing party’s statement (or a summary of that statement) to the other party, who will have the option of providing a written response. Any written response should be submitted to the Office of the Dean within 20 days after that person’s receipt of the appealing party’s written statement. The Office of the Dean will transmit to the Discipline Committee copies of the complainant’s and respondent’s written statements and any supplemental materials that the Office of the Dean wants to bring to the Discipline Committee’s attention. The Discipline Committee will promptly review the written materials and may affirm, increase, or decrease the level of discipline and may make this decision based on the written submissions, or may decide, in its sole discretion, to interview the parties or to hold an evidentiary hearing. The decision of the Discipline Committee will be final.

E. Supplemental Procedures Where the Discipline Involves the Withdrawal of Tenure

Where withdrawal of tenure is at stake, the matter will be referred to the appropriate committee pursuant to the Faculty Rules.

F. Hearing Procedures

To comply with applicable legal requirements, hearings provided under this Policy or the Student Handbook and Faculty Rules, and relating to violations of Title IX or VAWA, will be subject to the following requirements:

1. If the matter involves dating violence, domestic violence or stalking, the Title IX Coordinator will be consulted to ensure that the hearings are conducted in a manner that protects the safety of the parties and promotes accountability.
2. Notice of the hearing shall be provided both to the complainant and the respondent.
3. The complainant and respondent will have the same opportunities to make statements at the hearing and to present witnesses and other evidence. Any statements and testimony provided at such hearing shall be made under oath.

4. The complainant and respondent will both have the right to be represented by counsel of their choice.

5. The complainant and respondent will not usually be permitted to cross examine each other, although they can propose questions to the applicable committee members to consider asking. The committee will have full discretion to decide whether to ask the requested questions or not.

6. Evidence regarding the complainant’s or respondent’s sexual history, if relevant to the matter, will be restricted to the complainant’s sexual history with the respondent.

7. In proceedings involving the withdrawal of tenure, a preponderance of the evidence standard will be used to determine whether Title IX or VAWA has been violated. In proceedings challenging the level of discipline for students, the Discipline Committee’s determination will be limited to the level of discipline to be imposed based on the School’s earlier finding of a violation.

8. The complainant will not be required to be present for the entire hearing. If the respondent is allowed to be present for the entire hearing, the complainant must be afforded the same option. The School may consider arrangements so that the complainant and the respondent do not have to be present in the same room at the same time, such as closed circuit television.

9. Notice of the outcome of the hearing process will be provided simultaneously to the complainant and respondent, and will include information similar to that provided at the end of the investigation, subject to any confidentiality considerations.

G. Timing Issues

The length of time it will take to complete the investigation will vary based on the complexity of the complaint and other factors such as witness availability, delay or uncooperative actions of any necessary party, number of witnesses, holidays and vacation periods, and any other unforeseeable events / circumstances. The School’s goal is to resolve all complaints as efficiently and promptly as possible. In general, the resolution of the complaint will be completed within sixty (60) days of the filing of a complaint or from the report of the suspected violation of this Policy, unless the School determines in its discretion that more time is required. Any pending criminal investigation or criminal proceeding may have some impact on the timing of the School’s investigation, and will in some cases result in extending the time period needed to resolve the complaint.
XI. PRIVACY

The School shall protect the privacy of individuals involved in a report of Sexual Misconduct to the extent permitted by law and School policy. A report of Sexual Misconduct may result in the gathering of extremely sensitive information about individuals in the School community. While such information is considered confidential, School policy regarding access to public records and disclosure of personal information may require disclosure of certain information concerning a report of Sexual Misconduct. In such cases, efforts shall be made to redact the records in order to protect the privacy of individuals. An individual who has made a report of Sexual Misconduct may be advised of discipline or corrective measures imposed against the respondent when the individual needs to be aware of the discipline or corrective measures in order for it to be fully effective (such as restrictions on communication or contact with the individual who made the report).

In addition, when the offense involves a crime of violence or a non-forcible sex offense, FERPA permits disclosure to the complainant of the final results of a disciplinary proceeding against the respondent, regardless of whether the School concluded that a violation was committed. Information regarding discipline or corrective measures taken against the respondent shall not be disclosed without the respondent’s consent, unless permitted by law as noted above, or unless it is necessary to ensure compliance with the action or the safety of individuals.

XII. RETENTION OF RECORDS

The Title IX Coordinator is responsible for maintaining records relating to Sexual Misconduct, investigations, and resolutions. Records shall be maintained in accordance with School records policies.
Discrimination or Harassment Complaint Form*

Name of Person Completing this Form: ____________________________________________

Email Address of Person Completing this Form: ____________________________________

Telephone Number of Person Completing this Form: ________________________________

Name of Alleged Victim (if different): ____________________________________________

Name of Alleged Perpetrator: ____________________________________________________

Date, Time and Location of the Incident: __________________________________________

Describe General Category of Discrimination/Harassment (i.e., racial discrimination, sexual harassment, etc.) __________

Description of the Incident (Attach additional pages if needed): ______________________

_____________________________________________________________________________

_____________________________________________________________________________

_____________________________________________________________________________

_____________________________________________________________________________

_____________________________________________________________________________

_____________________________________________________________________________

Please attach non-original copies of any documentation that supports the above Complaint (e.g., emails, text messages, photos, etc.)

Desired Outcome/Relief Sought: __________________________________________________

_____________________________________________________________________________

☐ Please check this box if you wish for the Law School not to reveal your and the victim’s name to the alleged perpetrator. By
  checking this box, you understand that the Law School’s ability to respond to this Complaint may be limited.

I hereby attest that this Complaint is being filed in good faith, and that all the above facts are true to the best of my knowledge.

Signed: ___________________________ Date: ___________________________

* Submit your completed form by email or in person to Jacqui Pilgrim, Director of Student Services (jpilgrim@nesl.edu) or
  Associate Dean Judi Greenberg (jgreenberg@nesl.edu) as soon as practicable after the event to which it refers.