

Sexual Misconduct Policy

On Jan 12, 2021, Massachusetts Gov. Charlie Baker signed landmark legislation further addressing sexual violence on college and university campuses. The new law is the state's version of Title IX, the federal law prohibiting sex discrimination in higher education, with additional focus on preventing, reporting and responding to sexual assaults and other forms of sexual violence.

The New England College of Optometry (NECO) is committed to fostering an environment free from all forms of sexual misconduct, including sexual assault and sexual harassment. In support of this commitment, NECO takes steps to increase awareness of such misconduct, eliminate its occurrence on campus, provide support for victims, diligently investigate all reports of sexual misconduct, and deal fairly and firmly with offenders. Creating a safe campus environment and a culture of respect is the shared responsibility of all members of the NECO community, individually and collectively.

Sexual misconduct may take many forms, including sexual assault (rape), sexual harassment, dating and domestic violence, and stalking.

This policy classifies sexual misconduct into two categories:

- (i) sexual misconduct that is covered by Title IX, a federal law
- (ii) sexual misconduct in general

If conduct falls under both categories, Title IX and its procedures govern. The distinction between sexual misconduct governed by Title IX and other sexual misconduct is relevant because the procedures for resolving complaints differ in important ways whether Title IX applies or not.

NECO's goal is to promote an educational environment and workplace that is free of sexual harassment. Sexual harassment of employees or students occurring in the workplace or in other settings in which employees and students may find themselves in connection with their employment or student status is unlawful and will not be tolerated by the College. Further, retaliation against an individual who has complained about sexual harassment or who has cooperated with an investigation of a sexual harassment complaint is similarly unlawful and will not be tolerated.

All members of the NECO community play a role in building a safe and just educational environment by:

- Modeling healthy and respectful behavior in personal and professional relationships
- Increasing personal awareness of what constitutes sexual misconduct
- Speaking out against conduct that encourages sexual misconduct or discourages reporting

- Developing the necessary skills to be an effective and supportive ally to victims of sexual misconduct
- Intervening in situations that can lead to sexual misconduct and related misbehavior
- Interrupting an incident of sexual misconduct, if it is safe to do so

This Policy is intended to provide the NECO community with a clearly articulated set of behavioral standards, definitions of prohibited conduct, and key concepts. The Policy applies to all community members, including students, faculty, staff, affiliates, visitors, applicants for admission or employment, and independent contractors. Vendors and others who conduct business with the College or on NECO property are also expected to comply with this policy. The policy applies regardless of a person's gender, gender identity, gender expression, sexual orientation, age, race, nationality, class status, religion, or other protected status.

Because NECO recognizes that sexual assault, harassment, discrimination and other forms of sexual misconduct can have a profound impact on a person's personal, academic, and work life, the college encourages anyone coping with such a situation to seek help and support. Anyone who is uncertain of their options or simply need help should contact one of NECO's confidential resource advisors:

- Marianna Toumpourou – Associate Director of Student Accessibility and Advising
- Craig Keller - Registrar
- Amelia Fyler – Human Resources Generalist

Additionally, Casa Myrna, a nonprofit organization that provides a free domestic violence hotline is available to the community. Services are confidential and anonymous.

- Phone Number – 877-785-2020
- Website – www.casamyrna.org

Title IX Sexual Misconduct

Title IX Sexual Misconduct is conduct on the basis of sex against a person in the United States, occurring within the context of an education program or activity, which satisfies one or more of the following definitions:

1. Quid Pro Quo Sexual Harassment – A college employee conditions the provision of an aid, benefit, or service of the college on a person's participation in unwelcome sexual conduct.

2. Sexual Harassment – Unwelcome conduct that a reasonable person would determine to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's education program or activity.

3. Sexual Assault— Any sexual act directed against another person, without that person's consent (including instances where the victim is incapable of giving consent), and includes each of the following:

a. *Forcible Rape* – (i) sexual intercourse, or (ii) oral or anal sexual intercourse, or (iii) use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, either (A) forcibly and/or against that person's will, or (B) against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity;

b. *Fondling* – touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or not against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

c. *Incest* – nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

d. *Statutory Rape* – nonforcible sexual intercourse with a person who is under the statutory age of consent.

4. Dating Violence – 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 shall be determined based on a consideration of (a) the length of the relationship, (b) the type of relationship, and (c) the frequency of interaction between the persons involved in the relationship.

5. Domestic Violence – Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

6. Stalking – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for his, her or their safety or the safety of others; or (b) suffer substantial emotional distress.

The college recognizes that student complainants may be most comfortable disclosing Title IX Sexual Misconduct or Non-Title IX Sexual Misconduct to a college employee they know

well, such as a faculty member. Students are welcome to speak with such individuals, but should understand that if they disclose an incident of Title IX Sexual Misconduct or Non-Title IX Sexual Misconduct to these individuals, they are required to inform the Title IX Coordinator about the incident.

Protections for Students Who Report Sexual Misconduct

A person who reports such misconduct, either as a complainant or a third-party witness, will not be subject to disciplinary action by the College for his/her own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. However, the use of alcohol or drugs does not excuse conduct prohibited under this Policy and a person who has been incapacitated through the use of alcohol and drugs (or by any other means) cannot give effective consent to sexual activity.

It is a violation of NECO's policy to engage, directly or indirectly, in any form of retaliation or intimidation in connection with reports or adjudications of sexual misconduct. This policy and related processes may also be applied to address any allegation that a student or employee has attempted to prevent an individual from reporting sexual misconduct or has engaged in any acts of intimidation or reprisal with respect to any reported sexual misconduct. Conduct that may be considered retaliatory includes, but is not limited to:

- Discouraging an individual from reporting an incident of alleged sexual misconduct
- Discouraging witness participation
- Threatening or intimidating a participant in an investigation or conduct process
- Intentionally causing negative consequences for a participant in an investigation or conduct process or for a participant's personal relationships or social circles.

Any such acts of retaliation or intimidation should be promptly reported to the Office of Academic Affairs or Human Resources.

Definition of Consent

Massachusetts state law does not explicitly define consent. The legal definition can be extrapolated from the standards set in sexual assault statutes, which define an act of rape as one in which someone, "compels [a] person to submit by force and against [their] will, or compels such person to submit by threat of bodily injury" (Mass. Gen. Laws. Ann. Ch. 265 §22).

For the purposes of this policy, NECO defines consent as an explicitly communicated, reversible, and mutually agreed upon decision to engage in sexual activities, with all parties being capable of making this decision. Capability requires the absence of influence from incapacity or impairment, including but not limited to intoxication, unconsciousness, and a victim being underage.

Role of the Title IX Coordinator

The Title IX Coordinator oversees the College's review, investigation, and resolution procedures for reports of sexual harassment or other sexual misconduct and coordinates the Colleges' compliance with Title IX. The Title IX Coordinator is supported by a team of University administrators who serve as Deputy Title IX Coordinators. Each Deputy Title IX Coordinator is knowledgeable and trained in state and federal laws that apply to matters of sexual misconduct, as well as this Policy and the complaint resolution procedures.

Policy and Educational Opportunities

Incoming students will receive training within the first 45 days of matriculation.

Annual prevention and awareness training will be provided for all students every fall semester.

Additional Off-Campus Resources**Evidence Collection and Medical Treatment:**

- Sexual Assault Nurse Examiners (SANEs) are specially trained nurses who provide immediate, compassionate, and comprehensive medical-legal evaluation and treatment.
- Beth Israel Deaconess Medical Center ER (preferred hospital), 617-754-2323
- Brigham and Women's Hospital ER, 617-732-5636

Counseling and Support:

- Boston Area Rape Crisis Center 24-hour hotline 800-841-8371, www.barcc.org
- Fenway Community Health Violence Recovery Program 617-927-6250
www.fenwayhealth.org

Intimate Partner Violence Support and Advocacy

- REACH Beyond Domestic Violence 24-Hour Hotline 800-899-4000, www.reachma.org
- Jane Doe, Inc., <http://www.janedoe.org>
- The Network La Red (partner abuse hotline) 800-832-1901, <http://tnlr.org>

Reporting and Legal Support

- Victim Rights Law Center 617-399-6720, www.victimrights.org
- Greater Boston Legal Services 617-371-1234, www.gbls.org
- Boston Police Domestic Violence Unit and Sexual Assault Unit 617-343-4400, <http://bpdnews.com/fjc/>

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