

# Simmons UNIVERSITY

## **SEXUAL HARASSMENT POLICY FOR STUDENTS, FACULTY, STAFF, AND VISITORS**

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UPDATED as of August 14, 2020 to reflect new Title IX regulations

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*The federal and state laws, regulations, and guidance concerning Title IX, the Clery Act, the Violence Against Women Act (VAWA), and the MA Campus Sexual Violence Act are not static. Simmons will monitor changes and endeavor to keep the Policy current and reflective of best practices. If you believe the Policy contains outdated information, we encourage you to contact the Title IX Coordinator and/or our General Counsel.*

# SIMMONS UNIVERSITY TITLE IX TEAM

The Simmons University (“Simmons” or “the University”) Title IX team includes community members trained to support students, faculty, and staff impacted by Sexual Harassment. These individuals can help provide support and connect you with resources. In particular, the Title IX Coordinator and Deputy Title IX Coordinators, working with other members of the Title IX Team, will ensure a timely, effective, impartial, and consistent response to all reports and Formal Complaints of Sexual Harassment.

For an updated listing of the Title IX Coordinator and Deputy Title IX Coordinators, please see Simmons’ [webpage](#). As of the effective date of this policy, the Title IX Coordinator and Deputy Title IX Coordinators are:

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## **INTRODUCTION, SCOPE OF POLICY, AND NOTICE OF NON-DISCRIMINATION**

### **A. Introduction**

At Simmons University (“Simmons” or “the University”), we recognize the inherent dignity and worth of individuals to live, learn and work in an environment free from Sexual Harassment. Sexual Harassment is a broad term used to identify a number of unwelcome behaviors that occur on the basis of sex that are prohibited by Simmons. Simmons takes allegations of Sexual Harassment seriously and is committed to preventing and addressing this conduct, as it violates our community standards and is inconsistent with mutual respect, dignity, and personal integrity.

### **B. Scope of Policy**

This Sexual Harassment Policy for Students, Faculty, Staff, and Visitors (“Policy”) governs all Simmons community members, including undergraduate and graduate students, both online and on-the-ground students, faculty, staff, those employed by others but working on the Simmons campus, and visitors to Simmons. This Policy expressly prohibits Sexual Harassment, which includes, but is not limited to, Sexual Assault, Dating Violence, Domestic Violence, and Stalking. In addition to the foregoing, this Policy also:

- Details how Simmons handles complaints of Sexual Harassment that fall within the jurisdiction of Title IX of the Education Amendments of 1972 (Title IX). This includes the process for assessing reports of Sexual Harassment and investigating and resolving Formal Complaints of Sexual Harassment, including the implementation of Supportive Measures and remedial measures when appropriate, and the use of sanctions against those who are found responsible for engaging in Sexual Harassment.
- Identifies the process for handling complaints of Sexual Harassment that do not meet the jurisdictional requirements of the regulations that implement Title IX.
- Identifies on and off campus resources available to individuals impacted by Sexual Harassment and how to access those resources.
- Identifies Simmons’ Title IX Coordinator and Deputy Title IX Coordinators and describes their roles.

Simmons’ Title IX Coordinator, or designee, shall review and update the Policy on an annual basis, as needed.

### **C. Disability-Related Accommodations**

Any **student** who requires disability-related accommodations to participate in, comply with, or access any obligations, rights, or processes detailed in the Policy should notify the University’s Office of Accessibility

Services (“OAS”) immediately upon determining their need for accommodation(s). Failure to timely notify the OAS of their need for accommodations may result in the student not receiving accommodations in time for the accommodations to be applied as needed. For more information on how to contact the OAS, click [here](#).

Any **employee** who requires disability-related accommodations to participate in, comply with, or access any obligations, rights, or processes detailed herein should notify the University’s Department of Human Resources (“HR”) immediately upon determining their need for accommodation(s). Failure to timely notify HR of their need for accommodations may result in the employee not receiving accommodations in time for the accommodations to be applied as needed. For more information on how to contact HR, click [here](#).

#### **D. Notice of Non-Discrimination**

Simmons University does not unlawfully discriminate on the basis of race, color, natural or protective hairstyle, sex, sexual orientation, gender identity or expression, marital or parental status, pregnancy and pregnancy-related conditions, religion, age, national or ethnic origin, socio-economic status, ancestry, disability, veterans' status or genetic predisposition, or any other characteristic protected by federal, state, or local laws in its practices, programs, or activities. While this Policy specifically focuses on discrimination as it pertains to the prohibited conduct detailed below, the University has additional policies that protect students, employees, and other University community members from other forms of discrimination.

## **II. DEFINITIONS**

### **A. General Terms**

The following words shall have the following meanings:

**Advisor** - An individual chosen by a Party that may attend any Grievance Process or Alternate Grievance Process meeting or proceeding provided for under this Policy or Appendix A. A person that a Party chooses to be their Advisor is entitled to decline to serve as that Party’s Advisor from the start or at any time during the pendency of the Grievance Process or Alternate Grievance Process. An Advisor may be any person, including a parent or a friend, and an attorney may serve as an Advisor. An Advisor may only provide consultation and advice to their Party, as well as ask Cross-examination Questions, during a live hearing. The Advisor may only take a speaking role for purposes of asking and responding to administrative-related questions asked to/by the Hearing Officer or Title IX Coordinator and asking Cross-examination Questions in the live hearing, and not for any other purpose in the live hearing or in any other meetings and proceedings that are part of the Grievance Process or Alternate Grievance Process. If an Advisor is disruptive during any interview, meeting,

proceeding, and/or hearing, the Title IX Coordinator, Investigator, and/or Hearing Officer has the right to request that the Advisor leave the interview, meeting, proceeding, or hearing.

**Appeals Officer** - The individual who decides appeals filed pursuant to Section VII of this Policy. The Appeals Officer shall not be the same person who reached the determination regarding responsibility, the Title IX Coordinator, or the Investigator. This individual shall receive annual training on issues relating to sexual harassment, investigatory procedures, and hearing procedures.

**Alternate Grievance Process** - The process detailed in Appendix A of the Policy that is utilized **only** when processing Recognized Complaints.

**Complainant** - An individual who is alleged to have experienced conduct which could constitute Sexual Harassment. Individually, the Complainant may be referred to as **a Party**; collectively, the Complainant and Respondent are referred to as **the Parties**.

**Confidential Resource Person** - A University staff or faculty member or third-party University partner who the University has specifically designated as being required to keep confidential (to the extent allowed by federal and state law) any report to them regarding Sexual Harassment received while they are functioning within the scope of their duties in their role as a Simmons employee.

**Consent** - See definition listed in Section II(C) of this Policy.

**Cross-examination Questions** - Questions asked by a Party's Advisor at a live hearing.

**Dating Violence** - See definition listed in Section II(B)(2) of this Policy.

**Domestic Violence** - See definition listed in Section II(B)(3) of this Policy.

**Educational Program/Activity** - Includes all education and employment activities, locations, events, or circumstances over which Simmons exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs. In addition, any building owned or controlled by a student organization that is officially recognized by the University is considered to be part of the University's Educational Program/Activity.

**Formal Complaint** - A document signed and filed by a Complainant alleging Sexual Harassment against a Respondent and requesting that Simmons investigate the allegation(s) of Sexual Harassment. The Formal Complaint must contain the Complainant's physical or digital signature, or otherwise indicate that the

Complainant is the person filing the Formal Complaint, otherwise the document filed by the Complainant will not be deemed a Formal Complaint. In instances where the Title IX Coordinator is filing the Formal Complaint<sup>1</sup>, the Formal Complaint must include the Title IX Coordinator's signature.

**Grievance Process** - The process detailed herein that is initiated upon receipt by the Title IX Coordinator of a Formal Complaint so long as:

- The conduct alleged in the Formal Complaint: (a) would constitute Sexual Harassment, as defined in Sections II(B)(1), (2), and (3) of this Policy, if proven true; (b) occurred against a person within the United States; (c) occurred in Simmons' Educational Program/Activity; and
- The Complainant was participating in or attempting to participate in Simmons' Education Program/Activity at the time they filed the Formal Complaint.

This process may include an investigation and live hearing.

**Hearing Officer** - The individual who conducts a live hearing, issues a determination regarding responsibility, and determines sanctions as part of the Grievance Process, in an impartial and non-biased manner. This individual shall receive annual training on issues relating to sexual harassment, and hearing procedures.

**Incapacitation** - See definition listed in Section II(D) of this Policy.

**Informal Resolution** - A process by which the Parties may voluntarily resolve a Formal Complaint or Recognized Complaint without a full investigation and adjudication. This Policy allows for two types of informal resolution processes, which are detailed in Section V(F) of this Policy.

**Investigative Report** – A report prepared by the Investigator that fairly summarizes the relevant evidence.

**Investigator** - The individual who conducts the prompt, fair, and impartial investigation of the allegations contained in a Formal Complaint or Recognized Complaint, coordinates the exchange of directly related evidence with the Parties and their Advisors as part of the Grievance Process, and prepares and disseminates

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<sup>1</sup> There are circumstances under which the Title IX Coordinator may sign a Formal Complaint, and thus initiate the Grievance process, including, but not limited to, when the Title IX Coordinator is obliged to do so to ensure that Simmons would not be acting deliberately indifferent to known allegations of Sexual Harassment. A Title IX Coordinator's decision to sign a Formal Complaint is made on behalf of the University, not in support of the Complainant or in opposition to the Respondent, or as an indication of whether the allegations are credible, have merit, or whether there is evidence sufficient to determine responsibility. When the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator does not become a Complainant, or otherwise a Party, to a grievance process, and shall still serve free from bias or conflict of interest for or against any Party.



a draft and final Investigative Report. The Investigator will receive annual training on issues relating to sexual harassment and investigatory procedures.

**No Contact Order (NCO)** - A written order issued by the University containing one-way or mutual restrictions on contact between two or more members of the Simmons community; sometimes, these NCOs restrict individuals from one or more locations on campus. A NCO may prohibit all direct (in person) or indirect communication or contact (via phone, email, text, or other electronic means), including contact through friends, third parties, or via any form of social media.

**No Trespass Order** - A legal notice provided to individuals requiring that they stay off Simmons' property. A No Trespass Order is issued, verbally or in writing, by Simmons Public Safety.

**Protective Order** - Massachusetts law provides for two types of protective orders that may be issued by a Massachusetts court of law. A 209A protective order is a court order protecting an individual from unwanted contact or abuse by someone with whom they have a close relationship (a current or former family or household member, or a person with whom they have a substantial dating relationship). A harassment prevention order can offer protection from unwanted contact or abuse in other circumstances where no "dating relationship" exists.

**Recognized Complaint** - A complaint and/or allegations that may have been formally designated as a Formal Complaint under this Policy, but does not qualify for processing under the Grievance Process as a Formal Complaint because:

- The allegation of Sexual Harassment involves a student conditioning the provision of an aid, service, or benefit of Simmons on an individual's participation in unwelcome sexual conduct;
- The conduct alleged in the Formal Complaint: (a) did not occur within Simmons' Education Program/Activity, and/or (b) did not occur against a person in the United States; and/or
- The alleged misconduct, if proven true, would constitute an incident of sexual violence that does not meet the definition of Sexual Assault in this Policy, gender-based violence, and/or violence based on sexual orientation or gender identity or expression.

Any Formal Complaint dismissed based upon any the above criteria shall be, if appropriate under the circumstances as determined by the Title IX Coordinator, re-categorized as a Recognized Complaint for processing under the Alternate Grievance Process described in Appendix A of this Policy.

**Relevant** - Having the tendency to make the existence of any fact that is of consequence to the determination of the allegation(s) of Sexual Harassment more probable or less probable than it would be without the evidence, other than and except the following that are not Relevant:

- Questions or evidence relating to Complainant's sexual predisposition.
- Questions or evidence relating to Complainant's prior sexual behavior, unless such questions or evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the respondent and are offered to prove Consent.
- Information protected under a legally recognized privilege (such as the attorney/client privilege), unless the person holding such privilege has waived the privilege.
- A Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless the respective Party gives voluntary, written consent to release the evidence.
- Duplicative Cross-examination Questions.

**Respondent** - An individual who has been reported to have engaged in conduct that could constitute Sexual Harassment. Individually, the Respondent may be referred to as **a Party**; collectively, the Complainant and Respondent are referred to as **the Parties**.

**Responsible Employee** – Any person who, under this Policy, has a duty to report and/or the authority to take action to redress Sexual Harassment. **Simmons classifies all employees, as well as University students holding the role(s) of Resident Advisor, Betsy's Friends Peer Supporter, Wellness Ambassador, and/or Orientation Leader at the University, as Responsible Employees who must report Sexual Harassment to the Title IX Coordinator**, except for University staff who may assert a statutory privilege to maintain confidentiality (licensed psychologists, mental health counselors, clergy, and designated medical personnel) on behalf of a student/employee, and are acting within that privileged role. Likewise, individuals the University explicitly designates as Confidential Resource Persons are not considered Responsible Employees.

**Sexual Assault** - See definition listed in Section II(B)(1) of this Policy.

**Sexual Harassment** - See definition listed in Section II(B) of this Policy.

**Stalking** - See definition listed in Section II(B)(4) of this Policy.

**Statement** - Any verbal declaration or conduct that constitutes the making of a factual assertion to prove or disprove the allegations of Sexual Harassment. Said another way, a Statement is anything an individual says to try to prove or disprove whether Sexual Harassment did or did not occur. Any verbal or written declaration or conduct that is itself alleged to constitute Sexual Harassment *shall not* be considered a Statement.

**Timely Warning** - A warning issued by Public Safety to the Simmons community when deemed necessary to protect the safety of the community.

**Title IX Coordinator** - The person responsible for directing the University's response to reports of Sexual Harassment as described in this Policy, often in conjunction with one or more Deputy Title IX Coordinators or other designees. Whenever a responsibility is designated within this Policy for the Title IX Coordinator or the Deputy Title IX Coordinator, that responsibility can be delegated to another individual in appropriate circumstances. Any reference in this Policy to the Title IX Coordinator may also refer to a designee of the Title IX Coordinator. The Title IX Coordinator may assign any task designated for the Title IX Coordinator to a designee. Any reference to a designee in this policy is not intended to exclude use of a designee by the Title IX Coordinator for any other obligation or action addressed in the policy where a designee is not specifically mentioned.

## **B. Sexual Harassment**

Sexual Harassment is conduct on the basis of sex that satisfies one or more of the following:

1. A Simmons employee conditioning the provision of an aid, benefit, or service of Simmons on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Simmons' Education Program/Activity; and/or
3. Sexual Assault, Dating Violence, Domestic Violence, or Stalking (as defined below).

### **1. Sexual Assault**

Sexual Assault is an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, which, for the purposes of this Policy, only includes<sup>2</sup>:

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<sup>2</sup> What constitutes "Sexual Assault," and how those actions (i.e. Fondling, Incest, Rape, Sexual Assault with an Object, Sodomy, and Statutory Rape) are titled and defined is established by law and regulation. Simmons is without discretion to change these definitions.

- **Fondling** - The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or temporary or permanent mental incapacity.
- **Incest** - Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law, which includes one's own mother, father, grandmother, grandfather, daughter, son, granddaughter, grandson, sister, brother, niece, nephew, aunt, or uncle.
- **Rape** - The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- **Sexual Assault with an Object** - To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- **Sodomy** - Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- **Statutory Rape** - Sexual intercourse with a person who is under the statutory age of Consent, which in Massachusetts is anyone under the age of 16 years old.

## **2. 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 Complainant; and
- Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship.
  - The type of relationship.
  - The frequency of interaction between the persons involved in the relationship.

### **3. Domestic Violence**

Domestic Violence is an act(s) and/behavior that qualifies as a felony or misdemeanor crime of violence<sup>3</sup> committed by:

- A current or former spouse or intimate partner of the Complainant,
- A person with whom the Complainant shares a child in common,
- A person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner,
- A person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the Commonwealth of Massachusetts, and/or
- Any other person against a Complainant who is protected from that person's acts under the domestic or family violence laws of the Commonwealth of Massachusetts, which includes any person:
  - The Complainant is or was residing with within the same household; and/or
  - Who is or was related to the Complainant by blood or marriage.

### **4. Stalking**

Stalking is defined as engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to: (a) fear for their safety or the safety of others; or (b) suffer substantial emotional distress. Stalking behavior prohibited by this Policy may include, without limitation, unwelcome contact by phone, email, or social media, as well as in-person conduct. Stalking may involve individuals who are known to one another or have an intimate or sexual relationship, or may involve individuals not known to one another.

### **C. Consent**

Consent is agreement which is freely and actively given through clear words or actions, and creates mutually understandable permission regarding the conditions of sexual activity. Consent given at one time does not imply Consent for further sexual activity at another time.

#### **Remember:**

- Consensual sexual conduct requires the Consent of both participants.
- Consent to engage in sexual activity must be given knowingly, voluntarily, and affirmatively.
- Silence or lack of resistance, by itself, cannot constitute Consent.

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<sup>3</sup> Examples of felony or misdemeanor crimes of violence include, but are not limited to: murder, kidnapping, robbery, carjacking, and assault & battery.

- Relying on non-verbal communication alone can lead to serious misunderstandings.
- An individual is expected to seek and receive Consent to each act of sexual activity and for each form of sexual contact.
- If at any time it is reasonably apparent that a participant is hesitant, confused, upset, or unsure, the other participant should stop and obtain verbal Consent before continuing such activity.
- Consent may be withdrawn at any time by mutually understandable words or clear, unambiguous actions that indicate a desire to end sexual activity. Once Consent has been withdrawn, sexual activity must cease immediately.
- Previous Consent does not imply Consent to future sexual acts.
- A verbal “no” always indicates a lack of Consent, even if it may sound tentative, indecisive or insincere.

**Consent can never be given or obtained:**

- Through or in response to threats of physical force (words, gestures, or non-verbal actions), intimidation, or coercion, or any other factor that eliminates an individual’s ability to exercise free will.
- By an individual who is, voluntarily or involuntarily, incapacitated from alcohol and/or other drug consumption, or is otherwise unconscious, unaware, or otherwise physically helpless.
- By a person who is asleep or passed out.
- By or through a third party.
- By individuals with mental disabilities that make Consent not possible.
- By or from minor individuals, which are persons under the age of sixteen (16), the age of Consent in Massachusetts. Sexual activity with individuals under 16 is against the law and violates this Policy.

**D. Incapacitation and Use of Alcohol/Drugs**

Incapacitation is the inability to make informed, rational decisions due to the use of drugs or alcohol, due to being asleep or unconscious, due to injury that disables the ability to communicate, or due to an intellectual or other disability that prevents the individual from having the capacity to give Consent. An incapacitated person does not understand what is happening and/or cannot communicate clearly and coherently. Someone who is incapacitated cannot provide Consent to sexual activity. Someone who is incapacitated cannot make a rational, reasonable decision because they are unable to understand the consequences of their actions.

Where alcohol, other substances, and/or other drugs (prescription or non-prescription) are involved, incapacitation is a state beyond a heightened state of drunkenness or intoxication. Warning signs that a person may be approaching incapacitation can include slurred speech, vomiting, unsteady gait, odor of

alcohol or other substances, and concerns expressed by others about the individual's combativeness and/or emotional volatility.

If someone engages in sexual activity with someone they know or reasonably should know is incapable of making a rational, reasonable, informed decision about whether to engage in sexual activity, they may be engaging in conduct that violates this Policy. Incapacity may result from ingestion of a "date-rape" or "predatory" drug; possession, use, and/or distribution of any of these drugs is prohibited at Simmons. Administering any drugs for the purpose of incapacitating another person is prohibited under this Policy and Massachusetts criminal statutes.

Being under the influence of alcohol or drugs does not excuse Sexual Harassment. The use of alcohol or drugs is never an excuse for failing to obtain Consent and will not diminish one's responsibility to obtain Consent. Individuals are responsible for being aware of the other person's level of intoxication, and how it could impact their ability to give Consent.

### III. REPORTING SEXUAL HARASSMENT

If you have experienced Sexual Harassment, the University encourages you to seek help and support by reporting it. Reporting Sexual Harassment is different than submitting a Formal Complaint, in that a *report* of Sexual Harassment does not automatically trigger the Grievance Process or the Alternate Grievance Process. A description of how to file a Formal Complaint and what the Grievance Process and Alternate Grievance Process entail is set forth in Section V of this Policy and Appendix A of this Policy. Individuals can receive support and access to resources, as appropriate, regardless of whether they choose to file a Formal Complaint.

We encourage anyone with questions or concerns to seek support and guidance from [our campus and community resources](#). These resources can assist with making decisions, offer information about other resources and procedural options, and assist in the event that a report and/or resolution is pursued under this Policy. However, please note that most University employees are deemed Responsible Employees who are required to inform the Title IX Coordinator if you disclose conduct that qualifies as Sexual Harassment.

If you would like to speak to someone confidentially, please consider speaking with a Confidential Resource Person (as defined by this Policy) or another confidential resource (such as the University's Counseling Center staff and Health Center staff) at Simmons, who are not classified as Responsible Employees and have an

obligation to keep information you tell them about Sexual Harassment confidential, to the extent permitted by federal and state law. A list of confidential and non-confidential resources and their contact information can be found on the Simmons Title IX website: <https://www.simmons.edu/your-simmons/commitment-inclusivity/title-ix/university-and-community-resources>.

The University encourages individuals to report Sexual Harassment in a timely fashion. The passage of time may make it more difficult for the University to investigate and adjudicate behavior. An incident does not have to occur on the Simmons campus to be reported to the University.

### **A. How to Make a Report of Sexual Harassment to the University**

Any person may report Sexual Harassment to the Title IX Coordinator, whether or not that person is the person alleged to have experienced the offending behavior. Reports can be made in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator in this policy, or by any other means that results in the Title IX Coordinator receiving the verbal or written report. Reports may also be made by way of either of Simmons' two web-based forms:

- Simmons' Sexual Harassment Incident Report. Reports submitted by way of this [form](#) will be received directly by the Title IX Coordinator.
- Ethicspoint. Ethicspoint is a third party web-based tool that can be used to report Sexual Harassment. You can find information on Ethicspoint [here](#). Any reports of Sexual Harassment submitted through Ethicspoint will be shared with the Title IX Coordinator. Ethicspoint offers an anonymous reporting option. However, it is important to understand that when a report is made anonymously, the University's ability to respond to the report may be limited because of the incomplete information.

**Responsible Employees must immediately report to the Title IX Coordinator any and all reports (whether verbal or written) of Sexual Harassment that they receive.**

### **B. Assessment of Report and Next Steps**

When the Title IX Coordinator receives a report of conduct that may reasonably constitute Sexual Harassment, regardless of whether the report was made anonymously, the Title IX Coordinator will take a number of initial steps that are designed to assess the need of the University to take any immediate action to address the health and safety needs of the Complainant and the University community, and to determine if the Title IX Coordinator will be filing a Formal Complaint, as well as the need for any Supportive Measures.

These initial steps include, but are not limited to, the following:



- The Title IX Coordinator will contact the Complainant to discuss the nature and circumstances of the reported conduct, review relevant documentation, address the importance of preserving evidence, and discuss the Complainant's immediate physical safety and emotional needs. The Title IX Coordinator will discuss with the Complainant the availability of Supportive Measures, which are available whether or not the Complainant files a Formal Complaint.
- The Title IX Coordinator will also explain the process for filing a Formal Complaint to the Complainant, as well as notify the Complainant of: (a) the availability of this Policy; (b) the right to report (or decline to report) the matter to Public Safety and/or to local law enforcement if the conduct is potentially criminal in nature and that the individual may receive assistance from campus authorities in making any such notification; (c) the right to concurrently utilize the University's Grievance Process or Alternate Grievance Process, as appropriate, and any external civil or criminal processes available, and (d) that a report to law enforcement will not change the University's obligation to address the report, but it may briefly delay the timing of the University's response.<sup>4</sup> The Title IX Coordinator or their designee will also notify the Complainant of the available resources for seeking medical treatment, counseling, or other support services. These resources can be found on the Simmons Title IX website: [www.simmons.edu/about-simmons/title-ix](http://www.simmons.edu/about-simmons/title-ix).
- The Title IX Coordinator will assess the reported conduct to determine whether the circumstances pose an immediate threat to the health or safety of the University community that warrants any campus-wide safety measures, such as recommendation of the issuance of a timely warning<sup>5</sup>, emergency notification<sup>6</sup>, or no trespass order, or implementation of an emergency removal of the Respondent, each of which may result in the release of the Complainant's identity. When needed, the Director of Public Safety or their designee is responsible for distributing timely warnings.
- The Title IX Office will provide the Complainant a written explanation of the Complainant's rights and options. This will include information about: (a) options for, available assistance in, and how to request changes to academic, living, transportation, and working situations and Supportive Measures; and (b) existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims, both within Simmons and in the Boston community.

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<sup>4</sup> If a law enforcement agency requests that the University delay its process for a reasonable amount of time to allow it to gather evidence of criminal conduct, in most cases, the University will defer to law enforcement.

<sup>5</sup> Simmons issues timely warnings for certain crimes that are reported to campus security or local police that are considered to represent a serious or continuing threat to students and employees.

<sup>6</sup> Emergency notifications serve as an alert to a significant emergency or dangerous situation involving an immediate threat to the health or safety of the campus community.

## **1. Emergency Removal**

If the Title IX Coordinator determines there is an immediate threat to the physical health or safety of any students or other individuals arising from the allegations of Sexual Harassment, the Title IX Coordinator may implement the emergency removal of the Respondent from Simmons' Education Program/Activity. Prior to removing the Respondent, the Title IX Coordinator will undertake an individualized safety and risk analysis and determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal. The Title IX Coordinator may consult with other persons in conducting this assessment.

If the Title IX Coordinator decides to remove the Respondent from Simmons' Education Program/Activity, the Title IX Coordinator will provide notice of the removal to the Respondent. The Title IX Coordinator may also notify the Complainant of the removal decision, as appropriate. The removal will remain in place until such time as the Respondent no longer is an immediate threat to the physical health or safety of any students or other individuals.

Immediately following notification of the removal decision, the Respondent will have an opportunity to appeal the decision by presenting facts that might contradict the existence of an immediate threat to physical health or safety. This appeal is limited only to the removal decision and is not an opportunity to address the underlying allegations of Sexual Harassment against the Respondent.

### **a. Process for Filing An Appeal**

The Respondent has up to **ten (10) business days**, from the date the Respondent is notified of the removal decision, to submit a written, succinct summary (either hard copy or via e-mail) to the Title IX Coordinator addressing the facts that allegedly contradict the existence of an immediate threat to physical health or safety, along with any directly supporting documentation.

The Title IX Coordinator will submit the Respondent's written appeal and supporting documentation to Simmons' Threat Response Intervention Group (TRIG) for consideration and determination. The Title IX Coordinator may also notify the Complainant of the Respondent's appeal, as appropriate. The Respondent will bear the burden of establishing that the removal decision was incorrect. TRIG will not conduct a fresh or "de novo" review of the removal decision.

**b. Determination of Appeal**

TRIG may decide to speak with the Title IX Coordinator, either Party, or any other person for points of clarification. Based on the Respondent’s written appeal and any supporting information, TRIG may affirm and/or alter the removal decision. TRIG will communicate, in writing, the result of the appeal to the Title IX Coordinator, who will share the determination with the Respondent. TRIG may also communicate the result of the appeal to the Complainant via the Title IX Coordinator, as appropriate.

**2. Administrative Leave**

Under appropriate circumstances, the University may place a Respondent on administrative leave during the pendency of a Grievance Process, including during the investigation, hearing, and sanction period.

**C. Administrative Agency Resources – External Reporting Options**

Complainants may also choose to file a complaint with the following independent agencies, but should recognize that filing a report with any of these agencies does not place Simmons on notice of any Sexual Harassment and does not serve as a Formal Complaint of Sexual Harassment:

**U.S Department of Education, Office for Civil Rights**

5 Post Office Square, 8<sup>th</sup> floor  
Boston, MA 02109-3921  
617-289-0100

**Equal Employment Opportunity Commission**

JFK Federal Building  
475 Government Center  
Boston, MA 02203  
800-669-4000

**Massachusetts Commission Against  
Discrimination**

John McCormack Building  
One Ashburton Place  
Sixth Floor, Room 601  
Boston, MA 02108  
617-994-6000

**IV. OTHER PROVISIONS**

**A. Supportive Measures**

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to a Complainant who is a student enrolled in or an employee of the University before or after the filing of a Formal Complaint or where no Formal Complaint has been filed (“Supportive Measures”). Such measures are designed to restore or preserve equal access to Simmons’ education programs or activities without unreasonably burdening the other Party. Supportive Measures also include measures designed to protect the safety of all Parties or Simmons’ educational environment, or deter

Sexual Harassment. A Respondent who is a student enrolled in or an employee of the University may also request Supportive Measures, which the University may implement, as appropriate.

Supportive Measures that the Title IX Coordinator may implement include any of the following:

- Counseling through Simmons Counseling Center
- Assistance through Student Affairs or from other Simmons-related individuals
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- One-way or mutual restrictions on contact between the parties by way of a No Contact Order
- Changes to a student's on-campus housing
- Arranging a leave of absence or temporary withdrawal from the University/program
- Issuing a Trespass Order for Simmons' campus (facilitated through Public Safety)
- Facilitating taking an incomplete in a class without penalty or identifying alternative course completion options
- Providing increased monitoring, supervision, or security at relevant locations or activities
- Providing support through the employee assistance program
- Changing work location, work schedule, or reporting structures in certain circumstances
- Other temporary, reasonable limitations or modifications on or to access to certain University programs or activities

Simmons will maintain as confidential any Supportive Measures provided to the Complainant or Respondent, unless disclosure is necessary in order to implement and/or provide the Supportive Measures. The Title IX Coordinator is responsible for determining what information about a Complainant should be disclosed and to whom this information will be disclosed, and how this decision will be made.

The Title IX Coordinator will coordinate the effective implementation of Supportive Measures. In certain instances, the Title IX Coordinator may authorize the continuation of Supportive Measures beyond the conclusion of the Grievance Process or Alternate Grievance Process. What Supportive Measures are authorized and how they are implemented will depend on the circumstances and will remain in the discretion of the Title IX Coordinator or their designee.

Note that some Supportive Measures are appropriate for students and others for faculty and staff. The Title IX Coordinator or their designee will work with each individual, as needed, to implement the appropriate Supportive Measures. The Title IX Coordinator has the authority to modify or terminate a Supportive Measure, except as decided upon appeal of the Supportive Measure, as set forth directly below.

### **B. No Contact Orders, Protective Orders, and No Trespass Orders**

A "No Contact Order" (NCO) is a written order issued by the University containing one-way or mutual restrictions on contact between two or more individuals. All NCOs will be in writing, and a copy of a NCO will be provided to all Parties involved with the NCO. In addition, a copy of the NCO may be provided to both Public Safety, HR, and/or Student Affairs, as appropriate, for tracking and enforcement purposes. A NCO shall stay in effect until it is expressly cancelled and the Parties to the Order are notified in writing. A party to a NCO may make a request to the Title IX Coordinator for modification or termination of a NCO. The Title IX Coordinator will determine if such change is appropriate and will communicate any changes, in writing, to the Parties if the change is approved.

The issuance of an NCO does not necessarily restrict a Party from being on campus nor does it automatically place restrictions on the employment, academic, or co-curricular activities of either the Complainant or the Respondent. However, the Title IX Coordinator, in consultation with other individuals and/or departments, including, but not limited to, HR, Student Affairs, and/or Public Safety, may include provisions regarding the use of certain spaces on campus and may include other restrictions on either or both the Complainant or the Respondent to ensure the NCO is effective. For instance, an NCO may prohibit all direct (in person) or indirect communication or contact (via phone, email, text, or other electronic means), including contact through friends, third parties, or via any form of social media.

Should either the Complainant or the Respondent unexpectedly encounter one another after an NCO has been issued, both individuals must keep their distance and refrain from initiating direct or indirect communication or contact. Unless the parameters of a NCO dictate otherwise, the person who arrives second to a closed space is required to leave that space.

A NCO is not a determination of responsibility. However, if a Party violates a NCO, disciplinary action may result.

### **C. Harassment Prevention/Abuse Prevention Orders**

Massachusetts law provides for two types of protective orders:

- ✓ 209A Abuse Prevention Order: a court order protecting an individual from unwanted contact or abuse by someone with whom they have a close relationship (a current or former family or household member, or a person with whom they have a substantial dating relationship).
- ✓ Harassment Prevention Order: a court order that can offer protection from unwanted contact or abuse in other circumstances where no “dating relationship” exists.

An individual must appear before a judge in a Massachusetts court and file a sworn affidavit in order to obtain an order of this nature. Simmons Public Safety and/or the Office of Violence Prevention and Educational Outreach can provide students with information on how to obtain these orders and can help you through the court process.

Once an individual receives a court-issued protective order, Simmons will meet any applicable requirements under the protective order and will work with the individual to ensure the order is enforced. Simmons community members are encouraged to provide a copy of any prevention orders to Public Safety and the Title IX Coordinator for their records. A violation of a court-issued order can result in criminal charges against the violator.

#### **D. Trespass Orders**

Under state law, Simmons has the lawful authority to issue trespass orders to individuals requiring that they stay off the Simmons campus. A trespass order is issued by Simmons Public Safety; for the purposes of this Policy, the Title IX Coordinator, or their designee, would be the individual requesting a trespass order. While an initial trespass order may be issued verbally in certain emergency situations, it will subsequently be reduced to writing when the emergency or threat subsides. The written order will then be shared with individuals on campus that have a need-to-know, e.g., the Title IX Coordinator or Residence Life staff. Violation of a no trespass order may result in arrest and/or criminal prosecution.

A trespass order will remain in effect until it is removed by Public Safety and such removal is communicated in writing to those involved.

#### **E. Amnesty**

Sometimes students are hesitant to report Sexual Harassment because they fear being charged with other policy or conduct violations, such as underage drinking at the time of the incident. Similarly, students are sometimes hesitant to offer assistance to others to avoid getting themselves in trouble. A Complainant or a witness who initiates an investigation of Sexual Harassment shall not be subject to a disciplinary sanction for

a violation of the University's Student Code of Conduct related to the incident (including those provisions relating to drug and/or alcohol use), unless the University determines that the report was not made in good faith or that the violation was egregious (in the opinion of the University). An egregious violation shall include, but not be limited to, taking an action that places the health and safety of another person at risk. The University does reserve the right to ask an individual using the alcohol or drugs to get professional assistance if there are signs of problem behavior.

#### **F. False Reports, Statements, and/or Information**

The University takes all reports of Sexual Harassment seriously. An individual who knowingly makes an intentionally false report of Sexual Harassment, or makes false Statements or submits false information during the Grievance Process or Alternate Grievance Process, with the intent to injure the reputation of another, or made without regard for the truth, may be deemed in violation of, and may be subject to appropriate disciplinary actions pursuant to, the Student Code of Conduct or the Employee Handbook, as appropriate. This provision does not apply to reports, Statements, and/or submissions of information made in good faith, even if the reports, Statements, and/or submissions are not substantiated through an investigation.

#### **G. Reports Involving Minors**

The University will report all suspected child abuse and neglect involving minors in accordance with the University's Minors on Campus Policy. Any applicable member of the Simmons community that knows, suspects, or receives information indicating that a minor has been abused or neglected, is expected to inform the Massachusetts Department of Children and Families. In addition, Simmons employees should promptly notify the senior leader (Dean, VP, or SVP) to whom their unit reports, as well as the Office of the General Counsel. If you have questions or need guidance on this provision, please contact the Title IX Coordinator or one of the Deputy Title IX Coordinators.

#### **H. Consensual Relationships Policy**

Members of the Simmons community are expected to be familiar with, and comply with, Simmons' Consensual Relationships Policy. Unless determined otherwise by the Title IX Coordinator, conduct that violates both the Consensual Relationships Policy and this Policy shall be addressed pursuant to and under this Policy; whereas conduct that violates the Consensual Relationships Policy, but does not violate this Policy, will be referred to the appropriate office for handling.

## **I. Immediate Emergency Assistance and Evidence Preservation**

If you have experienced Sexual Harassment and need emergency assistance, we encourage you to seek immediate assistance from a medical provider and/or law enforcement. This is the best option to ensure preservation of evidence and to begin a timely investigative and remedial response.

The University will assist any Simmons community member in getting to a safe place and will provide transportation to the hospital, coordination with law enforcement, and information about the University's resources and complaint process.

### Public Safety or Law Enforcement

Simmons University Public Safety  
617-521-1111 (emergency)  
617-521-1112 (non-emergency)  
1 Palace Road, Suite B-104, Boston, MA 02115

Assistance is available from Public Safety **24 hours a day, 7 days a week**. The University's Public Safety Department typically has at least one officer who can serve as a certified sexual assault investigator. They can also connect you with other medical resources in the area.

### Boston Police or your local Police Department

Calling 911 will connect you to your local Police Department, and you can ask for the Sexual Assault Division. The Boston Police Department Sexual Assault Division 24-hour hotline is 617-343-4400.

### Medical Resources

Simmons Health Services  
617-521-1002; 94 Pilgrim Rd. Available during regular business hours.

Simmons Counseling Services  
617-521- 2455; 1 Palace Rd., Suite B-308. Available during regular business hours.

Beth Israel Deaconess Medical Center Emergency Room  
617-754-2450; 1 Deaconess Rd, Boston, MA 02215. Available 24 hours a day, 7 days a week.

Beth Israel Deaconess Medical Center is a SANE (Sexual Assault Nurse Examiner)-certified site. SANE-certified nurses are specifically trained to perform exams and collect forensic evidence from sexual assault survivors. Simmons' Public Safety may be able to assist with transportation to BIDMC.



### Preserving Evidence

Evidence can be collected even several days after an assault. To best preserve evidence, do not shower, bathe, douche, brush your teeth, or throw away any clothing that might contain evidence of the assault. Save articles of clothing, bedding etc. in separate paper bags. See [BIDMC Sexual Assault/Rape Crisis webpage](#).

We encourage individuals to review [our campus and community resources](#) for counseling and health, safety, academic and other support services available from the University and within the Boston area.

## **V. FORMAL COMPLAINTS, RECOGNIZED COMPLAINTS, AND THE GRIEVANCE PROCESS**

The filing of a Formal Complaint by a Complainant or signing of a Formal Complaint by the Title IX Coordinator will trigger either the Grievance Process or the Alternate Grievance Process, depending on the facts alleged at the time of filing. No Party or witness will be compelled to participate in either grievance process. The University will not retaliate against anyone who does not participate in a grievance process.

### **A. Process for Filing a Formal Complaint**

If a Complainant wants the University to investigate a report of Sexual Harassment, the Complainant must file a Formal Complaint with the Title IX Coordinator<sup>7</sup>.

A Formal Complaint is in writing and must: (1) allege Sexual Harassment against a Respondent(s), as applicable, (2) describe the alleged Sexual Harassment; (3) request that the University investigate the allegations of Sexual Harassment, and (4) contain the Complainant's physical or digital signature (or signature of the Title IX Coordinator in instances where the Title IX Coordinator is executing the Formal Complaint), or otherwise indicates that the Complainant (or Title IX Coordinator) is the person filing the Formal Complaint. The Formal Complaint need not contain the name and contact information for the Respondent if unknown by the Complainant.

The Title IX Coordinator will have available for use by a Complainant a Formal Complaint Form, which the Complainant may fill out, sign, and submit to the Title IX Coordinator. However, a Complainant is not required to use the Formal Complaint Form to submit a Formal Complaint to the Title IX Coordinator. The

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<sup>7</sup> Where appropriate, the Title IX Coordinator may initiate the Grievance Process by executing a Formal Complaint.

Title IX Coordinator may treat any written document that meets the above-listed four requirements as a Formal Complaint, even if the Formal Complaint Form is not used.

The Formal Complaint may be filed with the Title IX Coordinator in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator in this policy, or by any other means that results in the Title IX Coordinator receiving the Formal Complaint. Formal Complaints may also be filed by way of either of Simmons' two web-based methods: [Simmons' Sexual Harassment Incident Report form](#) or [Ethicspoint](#).

Formal Complaints shall be reviewed and decided upon pursuant to the preponderance of the evidence standard. Preponderance of evidence means that, after a thorough examination of the available facts, the fact-finder concludes that it is more likely than not that Sexual Harassment alleged to have occurred did, in fact, occur in violation of the Policy. There is a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Grievance Process and/or the Alternate Grievance Process.

### **B. Consolidation of Formal Complaints**

The Title IX Coordinator may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of Sexual Harassment arise out of the same facts or circumstances. When more than one Complainant or more than one Respondent is involved, references below to a Party, Complainant, or Respondent include the plural, as applicable.

In addition, in the Title IX Coordinator's sole discretion, in consultation with the Office of Student Affairs and/or HR (as appropriate), the University may consolidate reports of other related policy violations with a Formal Complaint and address all of the matters together.

### **C. Notice of a Formal Complaint**

Upon receipt of a Formal Complaint of Sexual Harassment, or upon the Title IX Coordinator executing a Formal Complaint, the Title IX Coordinator or designee will provide written notice to the Parties whose identities are known ("Initial Notice") that will include:

- A copy of this Policy, which includes a description of the Grievance Process and Alternate Grievance Process;
- The names of the Parties, if known;

- A description of the allegations of Sexual Harassment, including, but not limited to: the date, time, and location of the alleged incident(s), if known;
- A statement that, in the Grievance Process, the Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Grievance Process;
- A statement of which University policies were allegedly violated and by what actions; and
- Information about:
  - The Parties' rights relating to having an Advisor, who may be, but is not required to be an attorney;
  - The Parties' rights in the Grievance Process to inspect and review evidence directly related to the allegations;
  - Making false statements or knowingly submitting false information during a report of Sexual Harassment, and/or during the Grievance Process or Alternate Grievance Process, being a violation of Simmons' Student Code of Conduct and/or the Employee Handbook, as applicable;
  - Whether potential violations of other Simmons policies, including, but not limited to, the Simmons' Student Code of Conduct, the Faculty Policy Manual, and/or the Employee Handbook, will be addressed through the Grievance Process alongside the allegations of Sexual Harassment;
  - The availability of and requirements of Simmons' informal resolution processes, any consequences resulting from participating in either or both of those processes, and what records would be maintained or could be shared from participating in either or both of those processes; and
  - The availability of Supportive Measures.

#### **D. Dismissal of the Formal Complaint**

The Title IX Coordinator is required by law, and shall, dismiss a Formal Complaint in full or in part if the Title IX Coordinator determines at any time following the filing of a Formal Complaint that:

- The Complainant was not participating in or attempting to participate in Simmons' Education Program/Activity at the time the Complainant filed the Formal Complaint; or
- Conduct alleged in the Formal Complaint: (a) would not constitute Sexual Harassment as defined in this Policy, even if proved, (b) did not occur in Simmons' Education Program/Activity, or (3) did not occur against a person in the United States.

Due to differences between federal and state law, the Title IX Coordinator will also dismiss a Formal Complaint when the alleged misconduct serving as the basis for the Formal Complaint, if proven true, would constitute an incident of sexual violence that does not meet the definition of Sexual Assault in this Policy, gender-based violence, and/or violence based on sexual orientation or gender identity or expression. In that instance, the Formal Complaint will generally be converted into a Recognized Complaint.

The Title IX Coordinator may, and generally will, dismiss the Formal Complaint or any allegations therein, if at any time during the investigation or live hearing: a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw their Formal Complaint or any allegations therein; the Respondent is no longer enrolled in or employed by Simmons; or specific circumstances prevent the Investigator from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

If/when the Title IX Coordinator dismisses a Formal Complaint or any allegations therein, the Title IX Coordinator will send a notice to both Parties stating that the Formal Complaint has been dismissed and the reasons for the dismissal. Either or both Parties may appeal the dismissal of all or part of a Formal Complaint pursuant to the process and procedures set forth herein in Section VI of the Policy.

Other than instances when the Formal Complaint is dismissed either because the conduct alleged therein does not constitute Sexual Harassment (even if proved) or the Complainant was not participating in or attempting to participate in Simmons' Education Program/Activity at the time the Complainant filed the Formal Complaint, dismissal of the Formal Complaint by the Title IX Coordinator under this Policy may result, if appropriate under the circumstances as determined by the Title IX Coordinator, in the Formal Complaint being re-categorized as a Recognized Complaint and the Recognized Complaint being processed under the Alternate Grievance Process detailed in Appendix A of this Policy. In the Title IX Coordinator's discretion and as appropriate, allegations may also be referred for processing under the Simmons' Student Code of Conduct, the Employee Handbook, the Faculty Policy Manual, and/or any other policy or procedure established by Simmons.

#### **E. Notice of Hearings, Interviews, and Meetings**

When a Party's participation is invited or expected, that Party will receive written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, proceedings, or other meetings held as part of the Grievance Process, with sufficient time for the Party to prepare to participate.

## **F. Informal Resolution**

When a Formal Complaint is filed and not dismissed by the Title IX Coordinator, the Complainant(s) and Respondent(s) may choose to participate in an informal resolution process any time prior to a determination regarding responsibility. The University offers two different informal resolution processes: (1) Facilitated Resolution, and (2) Administrative Resolution, as defined below. One exception applies: when the allegations are that an employee engaged in Sexual Harassment of a student; the Parties may not utilize either informal resolution process.

Participation in either informal resolution process is strictly voluntary. A Party may indicate their willingness and voluntary consent to participate in either of the informal resolution processes by submitting to the Title IX Coordinator a *Voluntary Consent to Participate in an Informal Resolution Process (Consent Form)*. If there is more than one Complainant and/or more than one Respondent, any Parties who wish to participate may do so even in the absence of full participation by all Parties. If only the Complainant(s) or only the Respondent(s) consent to participate in an informal resolution process, and not the other Party, an informal resolution process shall not take place.

The individuals who may be present during any meetings or sessions held as part of an informal resolution process include: the Parties, the Parties' Advisors, and a Facilitator (for Facilitated Resolution). The University will designate a Facilitator based upon the process that is selected by the Parties.

The University reserves the right to deny the Parties the opportunity to participate in either of the Informal Resolution processes.

### **1. Facilitated Resolution**

Facilitated Resolution is defined as an informal process in which a facilitator ("Facilitator") assists the Parties in an effort to reach a negotiated resolution of the Formal Complaint or Recognized Complaint. The Facilitated Resolution process does not involve a full investigation and adjudication. The Facilitator does not determine responsibility. A benefit of the Facilitated Resolution process is that it allows the Parties to resolve the Formal Complaint in a manner that is mutually satisfactory to them, subject to approval by the Title IX Coordinator. The Facilitated Resolution process may achieve a resolution of the Formal Complaint more quickly than the Grievance Process or Alternate Grievance Process.

The Facilitator will not share with the Investigator, Title IX Coordinator, or Hearing Officer any statement or information provided to the Facilitator by a Party during the Facilitated Resolution process unless expressly

authorized by the Party to share the information. If the Facilitated Resolution process is unsuccessful, and the Facilitator testifies in another role at the live hearing as part of the Grievance Process, the Facilitator shall not testify (and neither shall the Hearing Officer or Advisors ask) about any information shared by either Party during the Facilitated Resolution session unless the Party expressly authorizes such testimony.

**i. Process**

The Facilitated Resolution process shall commence once the final Party that will be participating submits their respective *Consent Form* indicating their consent to participate in the Facilitated Resolution process.

The Facilitated Resolution process will involve separate communications between the Facilitator and the Parties. The process may also include a scheduled session, which may take place virtually via technology (such as Zoom), during which the Facilitator will meet with each Party separately (and/or together should the Parties request and consent to such) (“Session”). Any Session shall not be recorded. During any Session, unless the Parties and Facilitator are all meeting together per the request and consent of both Parties, the Facilitator shall meet with each Party separately to determine what would enable the Parties to resolve the Formal Complaint (or Recognized Complaint) by way of the Facilitated Resolution process.

To the extent permitted by law, the Facilitator shall keep confidential any statement or information a Party shares with the Facilitator during the Facilitated Resolution process unless the sharing Party expressly authorizes the Facilitator to share the information with the other Party.

If the Parties are unable to agree on terms for a Voluntary Resolution Agreement that would resolve the Formal Complaint (or Recognized Complaint), the Facilitated Resolution process will end and the Facilitator will notify the Title IX Coordinator that the Facilitated Resolution process failed to resolve the Formal Complaint (or Recognized Complaint). The Grievance Process or Alternate Grievance Process, as applicable, will continue.

Should the Parties agree upon terms for resolving the Formal Complaint (or Recognized Complaint), the Facilitator will simultaneously send the Parties a Voluntary Resolution Agreement that memorializes the terms agreed upon by the Parties. A Voluntary Resolution Agreement may include terms that are similar to Supportive Measures, remedies, and/or sanctions (as described herein). The Parties will have five business days to review the Voluntary Resolution Agreement and request revisions to the language. Upon receipt of the Parties’ requests for revision, the Facilitator will make revisions to the language of the Voluntary Resolution Agreement, where appropriate. Upon receipt of the revised Voluntary Resolution Agreement from the

Facilitator, the Parties will have three days to sign and submit the Voluntary Resolution to the Facilitator, indicating their agreement to enter into and be bound by the Voluntary Resolution Agreement.

At any time prior to signing a Voluntary Resolution Agreement, any Party has the right to withdraw from the Facilitated Resolution process and continue with the Grievance Process or Alternate Grievance Process, as applicable, with respect to the Formal Complaint (or Recognized Complaint). Withdrawing from Facilitated Resolution process shall not reflect negatively on the Party.

When, and only when, the Facilitator has received executed copies of the Voluntary Resolution Agreement from the Complainant and Respondent who wish to be bound by the terms of the agreement, the Facilitator shall send the executed Voluntary Resolution Agreement to the Title IX Coordinator. At that time, the Formal Complaint (or Recognized Complaint) shall be deemed resolved and the Complainant may not file another Formal Complaint against the Respondent involved in the Voluntary Resolution Agreement based upon the same allegations.

The Parties are welcome to both voluntarily consent to participate in the Facilitated Resolution process more than one time while any one Formal Complaint or Recognized Complaint is pending if the Parties have not already entered into a Voluntary Resolution Agreement to resolve the Formal Complaint (or Recognized Complaint).

Except where the terms must be disclosed in order to effectuate them, Simmons will maintain as confidential the terms of a Voluntary Resolution Agreement to the extent permitted by law and regulation.

#### **ii. Violation of a Voluntary Resolution Agreement By a Party**

If a Party violates or is suspected of violating a term(s) of their Voluntary Resolution Agreement, the alleged violation shall be deemed a violation of, and processed under, the Simmons Student Code of Conduct or Employee Handbook, as appropriate. Should the Party be found to have violated their Voluntary Resolution Agreement, the Party may be subject to sanctions, including and up to expulsion (for students) and termination (for faculty and staff).

### **2. Administrative Resolution**

Administrative Resolution is defined as an informal process in which the Title IX Coordinator (or designee) determines responsibility relating to all or some of the allegations in the Formal Complaint or Recognized Complaint without a full investigation or, for matters being processed in the Grievance Process, a hearing

("Administrative Resolution"). The Administrative Process may, at the discretion of the Title IX Coordinator, involve the imposition of sanctions, as well as provide for remedies for the Complainant.

A benefit of the Administrative Resolution process is that it allows the Parties to resolve the Formal Complaint or Recognized Complaint quickly and, for matters being processed under the Grievance Process, without a live hearing. An Administrative Resolution may achieve a resolution of the Formal Complaint or Recognized Complaint more quickly than the Grievance Process or Alternate Grievance Process.

Any allegations that the Parties do not agree to have resolved through the Administrative Resolution process shall proceed through the Grievance Process or Alternate Grievance Process, as applicable.

Simmons will maintain as confidential any determination of responsibility and sanctions levied, as well as any remedies provided, through the Administrative Resolution process, except to the extent the remedies or sanctions must be disclosed in order to effectuate them.

Either or both parties may appeal the determination of responsibility issued by the Title IX Coordinator (or their designee) through the Administration Resolution process in the manner set forth in Section VI of this Policy.

**i. Process**

Upon receipt of the executed Consent Forms from the participating Parties, the Title IX Coordinator will contact each Party separately to discuss the allegations of the Formal Complaint (or Recognized Complaint). Each Party will have an opportunity to submit documentation relating to the allegations being addressed for review by the Title IX Coordinator. The Title IX Coordinator may also review any other documentation relating to the allegations being addressed, including, but not limited to, the final Investigative Report if one is issued before or while the Administrative Resolution process is pending. The Title IX Coordinator may also interview individuals other than the Parties for information relating to the allegations under consideration.

Based upon the information provided by the Parties and otherwise gathered by the Title IX Coordinator, the Title IX Coordinator shall make a determination regarding responsibility on the allegations being addressed through the Administrative Resolution process, impose sanctions (as appropriate), and provide remedies for the Complainant.

**ii. Withdrawal from Administrative Resolution**

Any Party has the right to withdraw from the Administrative Resolution process and continue with the Grievance Process or Alternate Grievance Process, as applicable, with respect to the Formal Complaint (or



Recognized Complaint) up to the moment the Title IX Coordinator issues a determination regarding responsibility on the allegations being addressed through the Administration Resolution process. Withdrawing from the Administrative Resolution process shall not reflect negatively on the Party.

The Title IX Coordinator may share any and all information learned by the Title IX Coordinator during the Administrative Resolution process with the Investigator and/or Hearing Officer.

### **G. Designation of Investigator**

Simmons shall investigate the allegations in a Formal Complaint if the Formal Complaint is not resolved through an Informal Resolution Process. The Title IX Coordinator will designate an Investigator. At the University's discretion, more than one Investigator may be assigned and/or an external Investigator(s) may be engaged to conduct the investigation.

The Title IX Coordinator will provide the Parties with the name of the person assigned to investigate the reported conduct (the "Investigator(s)"). As soon as possible, but no later than three (3) calendar days after receiving notice of the identity of the Investigator, the Parties should inform the Title IX Coordinator (in writing) of any conflicts of interest and/or perceived bias relating to the selected Investigator. The Title IX Coordinator will consider the nature of the alleged conflict and/or bias and determine whether to assign a different individual as Investigator. The Title IX Coordinator's decision is final.

### **H. Investigation of Formal Complaint**

The Parties are encouraged to provide the Investigator with the identity of potential witnesses who have specific information relating to the allegations and with whom they would like the Investigator to speak, along with a brief description as to how the person(s) are relevant to the reported conduct. When witnesses are identified by the Parties, the Investigator may exercise discretion in determining who to interview.

In addition to conducting interviews, the Investigator shall gather evidence directly related to the allegations whether or not the Investigator intends to rely on such evidence. The Investigator will gather and evaluate all Relevant evidence, both inculpatory and exculpatory, in an impartial and objective manner. The Parties are encouraged to provide the Investigator any documentation or other items they would like to have considered, along with a brief description as to how the documents and/or items are Relevant to the reported conduct.

The Investigator will offer the Complainant, the Respondent, and any witnesses whom the Investigator believes will provide Relevant information the opportunity to participate in separate interviews with the

Investigator. The Parties may have their Advisor present at these interview. The Investigator will provide to each Party notice of the dates of their respective interview(s).

The Investigator will provide the Parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised the Formal Complaint. The Parties will not be permitted to submit additional evidence to the Investigator once the Investigator releases the evidence to the Parties for their review and inspection, unless the additional evidence was not reasonably available during the investigation. Therefore, the Parties are encouraged to submit all evidence to the Investigator within the time frame(s) provided by the Investigator.

The Investigator will exercise their discretion in determining what information is Relevant.

The Parties are permitted to discuss the allegations under investigation. However, disclosure by the Parties and/or their Advisors of any information learned through the investigation for the purpose of retaliation or to embarrass other individuals is strictly prohibited.

### **I. Investigation Prohibitions**

The Investigator will treat as irrelevant and not consider, require, allow, rely upon, or otherwise use questions or evidence that constitute or seek disclosure of:

- Information about a Complainant's sexual predisposition.
- Information about a Complainant's prior sexual behavior subject to two exceptions: if offered to prove that someone other than the Respondent committed the alleged Sexual Harassment, or if the evidence concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.
- Information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- A Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless the Investigator (or designee) obtains that Party's voluntary, written consent to release the evidence.

In no case will the sole fact that the parties have a current or previous consensual dating or sexual relationship imply Consent to the reported conduct or preclude a finding of responsibility for a Policy violation.

## **J. Evidence**

The Investigator will prepare an Investigative Report. Prior to completion of the Investigative Report, the Investigator will send/make available to each Party and the Party's Advisor, if any, in electronic format or hard copy, all evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including evidence, both inculpatory and exculpatory.

Before sending/making available the evidence to the Parties and their Advisors (if any) for their inspection and review, the Investigator shall to redact information contained in the documents or other evidence that is not directly related to the allegations or is otherwise barred from use, including:

- Evidence that constitutes information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege; and
- A Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless the Investigator (or designee) obtains that Party's voluntary, written consent to release the evidence.

The Parties shall have ten (10) calendar days from the date the Investigator makes available the evidence to submit a written response, should they wish to do so, which the Investigator will consider prior to completion of the Investigative Report. At the conclusion of the ten calendar days, the Investigator will provide to each Party the written response submitted by the other Party (if any).

The Parties and Advisors are strictly prohibited from sharing with any other individuals the evidence they receive for review. The Parties and Advisors may only use the evidence for purposes of the Grievance Process.

## **K. Investigative Report**

The Investigator shall prepare the Investigative Report. After considering the written responses submitted by the Parties upon their review of the evidence, the Investigator will provide the Parties and their Advisors (if any) with a copy of the final Investigative Report, in electronic format or hard copy. The Investigator will provide the Parties with the Investigative Report at least 10 calendar days prior to the date of the live hearing. The Parties are welcome, but not required, to submit a response to the Investigative Report any time prior to the live hearing. Any responses to the Report will shared by the Investigator with the other Party. The Investigator may, but is not required to, amend and supplement the Investigative Report upon receipt of any responses by the Parties.

## **L. Hearing**

The University will conduct a live, recorded hearing on the allegations contained in a Formal Complaint not previously dismissed by the Title IX Coordinator or resolved by way of an informal resolution process. The live hearing will take place virtually, via technology (such as Zoom) that enables the Hearing Officer and Parties to simultaneously see and hear the Party or the witness answering questions. The live hearing shall take place no sooner than ten (10) calendar days from the date the Investigator issues the Investigative Report to the Parties and their Advisors (if any) for their review.

The Title IX Coordinator shall schedule the live hearing. The Title IX Coordinator may postpone the live hearing from its scheduled date for good cause, in which case the Title IX Coordinator shall make reasonable efforts to determine the availability of the Parties and their respective Advisors.

### **1. Participants**

At a minimum, present at the live hearing shall be the Hearing Officer. Prior to the live hearing, the Title IX Coordinator will provide the Parties with the name of the person assigned as the Hearing Officer. As soon as possible, but no later than three (3) calendar days after receiving notice of the identity of the Hearing Officer, the Parties should inform the Title IX Coordinator (in writing) of any conflicts of interest and/or perceived bias relating to the selected Hearing Officer. The Title IX Coordinator will consider the nature of the alleged conflict and/or bias and determine whether to assign a different individual as Hearing Officer. The Title IX Coordinator's decision is final.

Prior to the live hearing, the Hearing Officer will have designated which witnesses are invited to provide testimony and the Title IX Coordinator will have notified the witnesses that their presence is requested at the live hearing for the purpose of answering questions. Witnesses may be fact or expert witnesses, and may include the Investigator.

The Parties, the Parties' chosen Advisors (if any), and witnesses that have received a request to participate in the hearing are expected, and may be required, to attend the live hearing. Any witness who attends the hearing will remain in the digital "waiting room" until it is the witness's time to provide testimony; no witness will have the opportunity to view the proceedings outside of the time period they are providing testimony. At the discretion of the Title IX Coordinator, other individuals, including, but not limited to, legal counsel for the University, may be present at the live hearing in whatever capacity the Title IX Coordinator deems appropriate.

Should any of the following situations arise, the following will occur:

- If a Party is present but does not have an Advisor of their choice present with them at the hearing, the Title IX Coordinator shall provide to the Party, without fee or charge to that Party, an Advisor of the Title IX Coordinator's choice for the duration of the hearing, who may be, but is not required to be, an attorney, and the live hearing shall proceed. Any Advisor provided by the University to a Party under this section will only be provided by the University through the end of the hearing.
- If a Party is not present, but the Party's Advisor is present, the live hearing shall proceed.
- If neither a Party nor an Advisor on behalf of the Party is present and the other Party is present, the Title IX Coordinator will appoint an advisor of the Title IX Coordinator's choice to serve as the absent Party's Advisor for purposes of the live hearing and the live hearing shall proceed.
- If no Parties appear for the hearing, the Hearing Officer may (but is not required to) either postpone the hearing, or conduct the hearing and reach a determination regarding responsibility.
- If a Party's Advisor is removed from the live hearing due to the Advisor violating the Rules of Order and Decorum established by this Policy, the Title IX Coordinator shall provide to the respective Party, without fee or charge to that Party, an Advisor of the Title IX Coordinator's choice, who may be, but is not required to be, an attorney, and the live hearing shall proceed.
- If the Hearing Officer determines that testimony from the Investigator is needed and the Investigator is unable to be present, the live hearing may be postponed until a later date at the discretion of the Hearing Officer.
- If a Hearing Officer is not present, the live hearing shall be postponed until a later date.

No person may be present at the hearing without the authorization of the Title IX Coordinator. This means that no person present at the hearing may have an unauthorized person in the room with them while the hearing is taking place, even if that unauthorized person is off-screen. All live hearing participants must participate in the hearing from a space they can make inaccessible to others so as to protect the confidential nature of the live hearing. If internet access is an issue, the Party or witness requiring assistance should speak to the Title IX Coordinator prior to the date of the live hearing.

## **2. Pre-hearing and Hearing Process**

In advance of the date of the hearing, the Hearing Officer may, at the Hearing Officer's discretion:

- Hold a pre-hearing conference for any interested Parties and/or the Parties' chosen Advisors for the purpose of answering questions regarding hearing procedures, providing administrative information about the hearing, and addressing other relevant matters.

- Allow the Parties to submit their Cross-examination Questions to the Hearing Officer for the purpose of allowing the Hearing Officer to issue preliminary determinations regarding the Relevancy of the submitted questions prior to the start of the hearing. The Hearing Officer will make the final determination regarding the Relevance of any Cross-examination Question at the hearing. The Parties are not permitted at the hearing to challenge determinations by the Hearing Officer regarding question Relevancy.
- Allow the Parties to submit to the Hearing Officer their objections to any document evidence that the Investigator identified as Relevant for the purpose of allowing the Hearing Officer to issue preliminary determinations regarding the Relevancy of the evidence prior to the start of the hearing. The Hearing Officer will make the final determination regarding the Relevance of any document evidence at the hearing. The Parties will have an opportunity at the hearing to address their objections with the Hearing Officer regarding the Relevancy of any document evidence.

The Hearing Officer will initiate the live hearing with opening remarks, as deemed appropriate by the Hearing Officer. Appointment of an Advisor(s) will be done at this time, as necessary. The Hearing Officer shall then offer each Party and witness that is present (in the order that the Hearing Officer deems appropriate) the opportunity to submit to questions from the Hearing Officer and/or Cross-examination Questions.

The Hearing Officer may seek privileged legal counsel or other types of assistance from other individuals prior to, during, and after the live hearing.

The Hearing Officer may call for a break of the hearing for a reasonable length of time for various reasons, such as to permit a Party to recover emotionally from a question, or to break for a meal.

At the live hearing, the Parties will have access to all of the evidence that was subject to the Parties' prior inspection and review. It is important to note, however, that evidence about the Complainant's sexual predisposition or prior sexual behavior is not Relevant, and will not be considered by the Hearing Officer, unless such evidence about the Complainant's prior sexual behavior is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent. A Party or witness may introduce Relevant evidence during the hearing that was not previously provided to the Investigator only if the evidence was not reasonably available to the Party or witness prior to the date of the hearing. The Hearing Officer shall make a determination regarding whether the newly-offered evidence is Relevant.

At no time during the live hearing are the Parties and/or the witnesses permitted to send or receive electronic messages, either by email, text message, or over social media, to any other person about the live hearing proceedings.

The recording of the hearing will be made available to the Parties for their inspection and review within a reasonable amount of time following the conclusion of the hearing.

### **3. Participation of Advisors and Cross-examination Questions**

An Advisor's ability to participate in the live hearing is limited to: (1) asking administrative-related questions, (2) conferring with their Party at a reasonable volume, and/or (3) asking Cross-examination Questions of the other Party(ies) and witnesses. Cross-examination Questions at the live hearing shall be conducted directly, orally, and in real time by the Party's Advisor and never by a Party personally.

Federal law and regulations require that the Hearing Officer permit each Party's Advisor to ask the other Party and any witnesses any and all Relevant Cross-examination Questions and follow-up questions, including those challenging the credibility of a Party or witness. Whether a question is Relevant is a determination that will be made by the Hearing Officer. Before a Complainant, Respondent, or witness answers a Cross-examination Question that has been asked, the Hearing Officer will state whether the question is Relevant and explain any decision to exclude the question as not Relevant.

A Party or witness may choose to not answer any Cross-examination Questions at the live hearing, either by refusing to answer the question or not appearing for the hearing. The Hearing Officer shall not draw any inferences from a Party's or witness's absence from the live hearing or refusal to answer Cross-examination Questions or other questions.

The Hearing Officer has a duty to objectively evaluate all Relevant evidence, which includes all of the Relevant document evidence detailed in the Investigative Report. The Hearing Officer will provide the Parties an opportunity to object to the Relevancy of any particular piece of document evidence (as well as argue as to the persuasiveness of any piece of Relevant evidence). The objecting Party shall state their Relevancy objection to the piece of document evidence and give a brief explanation as to the basis of their objection. The Hearing Officer may engage the Parties relating to the Relevancy objection. The Hearing Officer shall state their decision as to the objection and the basis for the decision.

The Hearing Officer may assess the credibility of the Parties and witnesses, including, but not limited to, on the basis of body language, demeanor, specific details, consistency, and corroborative evidence. The Hearing Officer's credibility determinations shall not be based on a person's status as a Complainant, Respondent, or witness or on any other protected status or characteristic.

#### 4. **Rules of Order and Decorum**

All individuals participating in or present for a live hearing must act in a professional and respectful manner. The University prohibits all individuals participating in or present for a live hearing from acting in an intimidating, abusive, and/or aggressive manner, as defined by the Hearing Officer overseeing the live hearing. Examples of intimidating, abusive, and/or aggressive behavior may include, but is not limited to:

- Yelling
- Using profane or inappropriate language
- Interrupting
- Making threats of any kind
- Engaging in behavior that violates this Policy, Simmons' Notice of Non-Discrimination, the Student Handbook, the Employee Handbook, the Faculty Policy Manual, or any other relevant University policy or procedure
- Acts that disrupt the live hearing, including, but not limited to, the inappropriate use of technology

A question, including a Cross-examination Question, may not have as its essential function or purpose to embarrass, blame, humiliate, or emotionally berate a Party or witness. Instead, questions must serve to probe the narrative of a Party or witness in order to give the Hearing Officer the fullest view possible of the evidence Relevant to the allegations at issue. If a Party's Advisor refuses to comply with the rules of decorum established by this Policy, the Hearing Officer may remove the Advisor from the hearing and the Title IX Coordinator shall appoint a different Advisor.

Failure by an Advisor to ask Cross-examination Questions may be deemed a violation of these rules of decorum and the Advisor may be removed from the hearing and from serving as the Party's Advisor for purposes of the hearing.

Individuals who violate the rules of decorum established in this Policy may be removed from the hearing and/or deemed in violation of, and subject to discipline under, the Simmons Student Code of Conduct, the Faculty Policy Manual, the Employee Handbook, or any other Simmons policy or procedure, as appropriate.



This section also applies to all other proceedings, interviews, and meetings that take place as part of the Grievance Process and/or Alternate Grievance Process.

### **M. Determination Regarding Responsibility**

The Hearing Officer shall issue a written determination regarding responsibility within seven (7) business days after the final determination of the Formal Complaint, unless there is good cause for a delay in this determination. The written determination shall include:

- Identification of the allegations potentially constituting Sexual Harassment;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to gather other evidence, and hearings held, as well as the dates of such;
- Findings of fact by a preponderance of the evidence which support the determination;
- Conclusions regarding the application of the Policy, the Simmons' Student Code of Conduct, the Faculty Policy Manual, the Employee Handbook, and/or any other Simmons policy, as appropriate<sup>8</sup>, to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and, where a determination of responsibility for Sexual Harassment has been made against the Respondent, a statement to the effect that remedies designed to restore or preserve equal access to Simmons' Education Program/Activity will be provided by the University to the Complainant; and
- The University's procedures and permissible bases for the Complainant and Respondent to appeal.

The Title IX Coordinator or designee shall provide the written determination to the Parties simultaneously. The determination regarding responsibility shall become final either on the date that the University provides the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal of the determination regarding responsibility would no longer be considered timely.

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<sup>8</sup> There may be instances where allegations of misconduct that do not constitute Sexual Harassment, but which constitute violations of other Simmons policies, such as the Student Code of Conduct or Employee Handbook, are also adjudicated at the live hearing. For instance, the University may determine that the evidence supports a determination that the Respondent engaged in possession of alcohol while under the age of 21, and may sanction the Respondent accordingly.

## **N. Sanctions and Remedies**

### **1. Sanctions**

When the Hearing Officer makes a finding of responsibility, sanctions may be levied against the Respondent. In addition to the Hearing Officer, other individuals may be involved in determining appropriate sanctions. For instance, and without limitation, in deciding appropriate sanctions, the following individuals may be involved for a Respondent who is a:

- Student, the Dean of Students and Director of the Office of Accessibility Services.
- Faculty member, the Provost and/or Dean.
- Staff member, the Vice President and/or staff member's manager.

Other than the Appeals Officer, no individual school, department, or person may reverse or alter a finding, sanction, or other decision established in the determination issued by the Hearing Officer.

The ranges of sanctions and remedies described below are required by Federal law and regulation. The published ranges are purely for purposes of notice as to the possible ranges of remedies and disciplinary sanctions and do not reflect the probability that any particular outcome will occur.

Examples of sanctions that may be imposed include, but are not limited to, the following:

- A copy of the determination of responsibility being placed in an employee's personnel record or in a student's student record, as applicable;
- Paid or unpaid suspension from employment;
- Termination from employment;
- Referral to the faculty's member's Dean for consideration relating to revocation of tenure and/or dismissal;
- Written disciplinary warning (for employees, this would be maintained in the employee's personnel record);
- Exclusion from Simmons-related events;
- Probation (meaning, a set period of time during which the student or employee is given the opportunity to modify behavior, to complete specific assignments, to meet with designated persons, and to demonstrate positive contributions to the University community);
- Removal from Simmons-supported and/or on-campus housing;
- Loss of Simmons-related privileges;
- Removal from a Simmons-authorized sports team, group, club, or organization;

- Student suspension from Simmons (meaning, exclusion from classes and from all privileges and activities of the University, for a defined period of time);
- Student expulsion from Simmons (meaning permanent termination of the student's status without the possibility of readmission to the University);
- Participation in or review of an in-person or online educational workshop or webinar;
- Any measure listed as a Supportive Measure in this Policy; and/or
- Other time-limited or permanent restrictions on access to the University's programs and activities.

A Party's violation or failure to fulfill any assigned sanction shall be deemed a violation of, and processed under, the Simmons Student Code of Conduct or Employee Handbook, as appropriate. Should a Party be found to have violated or failed to fulfill any assigned sanction, the Party may be subject to additional sanctions, including and up to expulsion (for students) and termination (for faculty and staff).

## **2. Remedies**

The Title IX Coordinator shall be responsible for effective implementation of remedies allowed for by the written determination. The Title IX Coordinator will determine with input from the Complainant what remedies the Complainant will receive. Remedies shall be designed to restore or preserve equal access to Simmons' Education Program/Activity for the Complainant. Remedies may include the same individualized services described as Supportive Measures, however, remedies may be disciplinary or punitive and may place a burden the Respondent.

# **VI. APPEALS PROCESS**

Both the Complainant and the Respondent are entitled to appeal: (a) dismissal by the Title IX Coordinator of a Formal Complaint or any allegations in a Formal Complaint, (b) a determination regarding responsibility by the Title IX Coordinator (or designee) issued through the Administrative Resolution process, and/or (c) a determination regarding responsibility by either the Hearing Officer (through the Grievance Process) or the Title IX Coordinator (through the Alternate Grievance Process). No Party may appeal the severity or proportionality of sanctions imposed in conjunction with a determination of responsibility.

## **A. Grounds for Appeals**

A Party's appeal must be based upon at least one of **three grounds** for appeal:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX Coordinator, Investigator(s), or Hearing Officer had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

To ensure the integrity of the process, the process for appeals will be strictly followed.

## **B. Process for Filing Appeals**

The appealing Party must submit the appeal to the Title IX Coordinator by hard copy or via email within **ten (10) calendar days** of the date the determination regarding responsibility or decision dismissing all or part of the Formal Complaint was issued to the appealing Party.

The appeal must include a written, succinct summary addressing:

- The basis (or bases) for the appeal, which must include specific reference to one or more of the three grounds for an appeal;
- A description of the procedural error(s), the new evidence, and/or bias. If new evidence is being presented, it is important that the Appellant indicate why it was not available at the time the determination regarding responsibility was made. No matter the basis (or bases) for the appeal, the Appellant must describe in detail how the outcome of the matter was affected or could be affected, as appropriate depending on the basis of the appeal.

Upon receipt of an appeal by either Party, the Title IX Coordinator will notify the other Party in writing that the appeal has been filed so long as the other Party was on notice already of the Complaint, and provide that Party with a copy of the appeal. The Title IX Coordinator will notify both Parties as to who has been selected to serve as the Appeals Officer on the appeal.

Both Parties have five (5) calendar days from the date the Title IX Coordinator notifies the other Party of the appeal to submit to the Title IX Coordinator (either in hard copy or via email), should they wish to do so: (a) a written statement in support of, or challenging, the outcome (i.e. the finding regarding responsibility or dismissal of the Formal Complaint), and/or (b) a written statement describing any perceived conflicts of interest and/or perceived bias relating to the selected Appeals Officer. The Title IX Coordinator will consider

the nature of the alleged conflict and/or bias and determine whether to assign a different individual as Hearing Officer. The Title IX Coordinator's decision is final.

Once time has expired for the Parties to submit their respective written statements to the Title IX Coordinator in support of or challenging the outcome, and identifying any perceived conflicts of interest or bias, the Title IX Coordinator will forward to the Appeals Officer all pertinent materials.

### **C. Determination of Appeal**

The Appeals Officer shall review the appeal(s) and all pertinent materials. The Appeals Officer may seek guidance from other individuals. The burden of proof to succeed in the appeal rests with the Appellant (the person who submitted the appeal). The appeal is not a fresh or "de novo" review of the entire matter.

The Appeals Officer will issue a written decision simultaneously to Parties that describes the result of the appeal and the rationale for the result. The Appeals Officer may do the following: affirm or modify the original determination regarding responsibility or dismissal of all or part of the Formal Complaint, and/or remand the matter to the Hearing Officer for additional action on one or more issues as specified by the Appeals Officer.

## **VII. TIMING**

The University will in most cases resolve the Grievance Process or Alternate Grievance Process, including through the determination regarding responsibility, but exclusive of any appeal of the determination regarding responsibility, within ninety (90) calendar days of the date the Title IX Coordinator received the Formal Complaint, subject to any approved delays or extensions of deadlines permitted or granted by the Title IX Coordinator for good cause. The University will resolve any appeal of a determination regarding responsibility within thirty (30) days of the date the Title IX Coordinator receives the appeal, subject to any approved delays or extensions of deadlines permitted or granted by the Title IX Coordinator or Appeals Officer for good cause.

Parties may request and be granted for good cause extensions of any deadlines imposed within the Grievance Process or Alternate Grievance Process per the discretion of the Title IX Coordinator. The University will provide the Parties with written notice of any delay or extension and the reasons for the action.

To request an extension of a deadline, a Party must submit the request in writing to the Title IX Coordinator, detailing the basis for the request. The Title IX Coordinator may request documentation relating to the Party's

request in conjunction with their review of the request. The Title IX Coordinator's decision relating to the Party's request is final.

A Party will be deemed to have received an email on the date the sender sends the email. In the event the University is unable in any case to meet these designated timeframes, the University will provide notice to the Parties of the extension and the reasons for the extension.

## **VIII. RETALIATION**

Simmons University is committed to responding to reports of Sexual Harassment and encourages members of the community to report such incidents without fear of retaliation. The University strictly prohibits retaliation, which means no person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy, including Appendix A. Retaliation, whether actual or threatened, destroys the sense of community and trust that is critical to a learning and work environment.

Retaliation can be committed by an individual or a group, and can take many forms. For instance, any Party who shares information with others regarding any determination of responsibility (including information contained in the determination of responsibility) for the purpose of harming, embarrassing, or humiliating a Party or witness may be deemed to have engaged in retaliatory conduct prohibited by this Policy. All retaliation is prohibited, regardless of how or where it is done, including retaliation committed in person, through electronic means, social media, or some other mode or platform.

Individuals found to have retaliated may be subject to disciplinary action, up to and including dismissal or exclusion. Retaliation should be reported promptly to the Title IX Coordinator. Retaliation may be treated as a violation of, and processed under, Simmons' Student Code of Conduct, Employee Handbook, or any other Simmons policy or procedures, as applicable.

The University shall keep confidential the identity of any individual who has made a report of Sexual Harassment and those individuals who participate in the Grievance Process or Alternate Grievance process following the filing of a Formal Complaint, except as needed to: conduct the Grievance Process or Alternate Grievance Process; implement Supportive Measures, remedies or sanctions; document the existence of the determination of responsibility; and/or comply with law or regulation.

## IX. RECORD RETENTION<sup>9</sup>

The University shall maintain for a period of seven (7) years from the date a record is created records of –

- Each Sexual Harassment investigation including: any determination regarding responsibility, any audio or audiovisual recording or transcript of the live hearing, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the University's Education Program/Activity;
- Any appeal and the result therefrom;
- Any informal resolution process<sup>10</sup> and the result therefrom; and
- All materials used to train Title IX Coordinators, Investigators, Hearing Officers, and any person who facilitates an informal resolution process, including Facilitated Resolution and/or Administrative Resolution.

This requirement applies to even those records from truncated investigations that led to no adjudication because the acts alleged did not constitute Sexual Harassment under Title IX and the Formal Complaint (or allegation therein) was dismissed.

In addition, for each response required due to: (a) the University having actual knowledge of Sexual Harassment in the University's Education Program/Activity against a person in the United States, and/or (b) the Title IX Coordinator receiving a Formal Complaint of Sexual Harassment, the Title IX Coordinator or designee must create, and maintain for a period of seven (7) years, records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of Sexual Harassment. In each instance, the Title IX Coordinator or designee must document the basis for the conclusion that the University's response was not deliberately indifferent, and document that the University has taken measures designed to restore or preserve equal access to the University's Education Program/Activity. If the Title IX Coordinator does or did not provide a Complainant with Supportive Measures, then Title IX Coordinator or designee must document the reasons why such a response was not clearly unreasonable in light of the known

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<sup>9</sup> When sharing information for purposes of complying with its obligations under the Clery Act, Simmons shall not include a Complainant's personally identifiable information.

<sup>10</sup> A Facilitator's notes created and used only as a memory aid during the Facilitated Resolution process, and which are not shared with any other individual, shall not be considered records that must be maintained under the Policy.

circumstances. The Title IX Coordinator or designee may in the future provide additional explanations or detail additional measures taken.



## **APPENDIX A**

### **Alternate Grievance Process**

#### **Scope**

The Alternate Grievance Process detailed in Appendix A is utilized only when processing Recognized Complaints.

The terms of the Policy remain in effect in their entirety, except where the terms of this Appendix conflict with the terms of the Policy, in which case the terms of this Appendix shall guide but only for those complaints that are categorized as Recognized Complaints.

Matters entering the Alternate Grievance Process shall enter at the corresponding step in the Grievance Process to the greatest extent possible. For instance, if a Formal Complaint is removed to the Alternate Grievance Process in the middle of the investigation on the basis that the investigation revealed for the first time that the alleged Sexual Harassment occurred outside the United States, then the Formal Complaint will be re-categorized as a Recognized Complaint, enter the Alternate Grievance Process, and the investigation shall continue uninterrupted.

#### **Definitions**

All terminology used in Appendix A has the same definitions as set forth in the Policy, except that for the purpose of Appendix A, the definition of Sexual Harassment is expanded as follows:

- The term “sex” in the definition of Sexual Harassment shall be deemed to include gender identity and/or expression.
- To include incidents of sexual violence that do not qualify as Sexual Assault (as defined by the Policy); gender-based violence; and/or violence based on sexual orientation or gender identity or expression. These forms of Sexual Harassment need not be on the basis of sex.
- To include a student conditioning the provision of an aid, service, or benefit of Simmons on an individual’s participation in unwelcome sexual conduct (quid pro quo harassment by a student).

#### **Notice to the Parties**

Unless the Title IX Coordinator has already provided notice to the Parties as set forth in Section V(C), upon the re-categorization of a Formal Complaint into a Recognized Complaint, the Title IX Coordinator will provide written notice to the Parties as set forth in Section V(C) of the Policy and shall issue to the Parties all notices provided for in Section V(E) of the Policy.

### **Advisors**

The parties may have the assistance of Advisors, in the manner and as set forth in Section II(A) of the Policy.

### **Informal Resolution Process**

The Parties may choose to participate in either informal resolution process, any time prior to a determination regarding responsibility by the Title IX Coordinator, as set forth in Section V(F) of the Policy. As set forth in the Policy, the University reserves the right to deny the Parties an opportunity to engage in either of the Informal Resolution processes.

### **Investigation**

Simmons shall investigate the allegations in a Recognized Complaint if the Recognized Complaint is not resolved through either of the informal resolution processes. As set forth in Section V(G) of the Policy, the Title IX Coordinator will designate an Investigator, who may be the Title IX Coordinator, and permit the Parties to inform the Title IX Coordinator of any conflicts of interest relating to the Investigator.

Sections V(H) and (I) of the Policy apply to investigations of Recognized Complaints. Section V(J) of the Policy does not apply to the Alternate Grievance Process.

### **Investigative Report**

The Investigator shall prepare an Investigative Report, which shall include evidence obtained as part of the investigation that is directly related to the allegations, if any such evidence exists, and may include preliminary conclusions and recommendations, including an assessment of whether the Policy was violated. The Investigator will provide the Parties with a copy of the Investigative Report. The Parties are welcome, but not required, to submit a response to the Investigative Report to the Investigator within ten (10) calendar days of the date the Investigator provides the Parties with Investigative Report. The Investigator may, but is not required to, amend and supplement the Investigative Report upon receipt of any responses by the Parties.

Section V(K) of the Policy does not apply to the Alternate Grievance Process.

### **Determination Regarding Responsibility and Sanctions**

There is no live hearing as part of the Alternate Grievance Process. Section (V)L of the Policy, with the exception of Section V(L) (4), does not apply to the Alternate Grievance Process. Likewise, Section V(M) does not apply to the Alternate Grievance Process.

The Title IX Coordinator will consider the Investigative Report and the respective Party responses, and will make the final determination regarding responsibility relating to whether the Respondent engaged in Sexual Harassment as alleged in the Recognized Complaint and in violation of the Sexual Harassment Policy. The Title IX Coordinator shall not take into consideration evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such evidence about the Complainant's prior sexual behavior is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent. The Title IX Coordinator shall also not take into consideration evidence expressly describing an individual's character for the purpose of the question or evidence being used as character evidence.

Recognized Complaints shall be reviewed and decided upon pursuant to the preponderance of the evidence standard, as defined in this Policy.

At no time during the investigation or while the Title IX Coordinator is making the final determination will the Complainant and/or Respondent be permitted to personally or directly ask the other Party questions relating to the allegations contained in the Recognized Complaint.

The Title IX Coordinator will determine if sanctions are appropriate. The Title IX Coordinator may consult with other University Officers and administrators, such as the Dean of Students, Vice Presidents, Provost and/or Deans of the University's Colleges, in determining sanctions. The range of sanctions are described in Section V(N)(1) of the Policy.

The Title IX Coordinator will determine what remedies for the Complainant are appropriate, as described in Section V(N)(2) of the Policy.

The Parties have the right to appeal the Title IX Coordinator's final determination regarding responsibility, per the process detailed in Section VI of the Policy. Other than the Appeals Officer, no individual school, department, or person may reverse or alter a finding, sanction, or other decision established in the determination issued by Title IX Coordinator.

The determination shall become final either on the date that the University provides the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal of the determination regarding responsibility would no longer be considered timely.