

## **APPENDIX B: EQUITY AND TITLE IX: POLICIES AND PROCEDURES**

NOTE: Bard College at Simon's Rock and Bard Academy at Simon's Rock share a unified campus, faculty, staff, and administration. As such, a single Title IX and Equity Policy will apply equally to both institutions. Where there are procedural differences depending on the status of the student, such differences will be noted. For the purposes of these policies, "the Institution" or "Simon's Rock" will be understood to comprise both Bard College at Simon's Rock and Bard Academy at Simon's Rock. "Student" will be understood to describe either a student of Bard College at Simon's Rock or a student of Bard Academy at Simon's Rock.

### **A. INTRODUCTION**

Bard Academy and Bard College at Simon's Rock expect that no member of the Simon's Rock community will discriminate against any other member – or any member's guests. We see all community members as interdependent, yet functioning in roles that are far from interchangeable. We believe in respecting members of the Simon's Rock community for their differing abilities, differing backgrounds, and differing contributions. We also believe that these differences can successfully mesh for a greater common good.

Within our diverse community, members will disagree from time to time. Simon's Rock expects that such disagreements will be addressed peacefully, through discussion and debate, rather than through force or confrontation. Therefore, while Simon's Rock seeks to ensure the rights of all to express themselves in words and actions, it also prohibits behavior that infringes on the rights of others or that digresses from Simon's Rock's educational mission and purpose.

Because Simon's Rock takes allegations of discrimination, harassment, and sexual misconduct seriously, we will respond promptly to complaints in accordance with the procedures set forth herein; if such inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate.

Simon's Rock, as well as state and federal laws, also prohibits retaliation against any person who, in good faith, reports, assists in reporting, or participates in an investigation of possible gender-based misconduct. Any retaliation against an individual who has complained about discrimination or harassment, or sexual misconduct or retaliation against individuals for cooperating with an investigation of a discrimination, or harassment, or sexual misconduct complaint is unlawful and will be investigated as a separate incident of harassment.

While overt forms of discrimination and harassment may be obvious, more subtle forms may be difficult to identify. It is also possible for words or behavior to be misunderstood, for personal conflicts to be misconstrued as harassment based on racial, sexual, or other differences, or for legitimate disagreement to feel like harassment to a person who holds an unpopular opinion. It is therefore incumbent on all members of the Simon's Rock community to recognize the seriousness of discriminating against or harassing someone and the seriousness of charging someone with these acts.

To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to equity in all aspects of its educational program or activity, Simon's Rock has developed the following internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, allegation of sexual misconduct, or allegation of retaliation.

## **B. REPORTING HARASSMENT, DISCRIMINATION, OR SEXUAL MISCONDUCT**

Any person may report harassment or discrimination whether or not the reporting individual is the person alleged to be the victim of conduct that could constitute discrimination, harassment, or sexual misconduct. Simon's Rock will respond promptly and meaningfully to any report.

*Any report of harassment or discrimination on the bases of a protected class other than sex may be directed to either:*

Isabel Filkins  
Title IX Coordinator  
Building: Student Union  
Email: ifilkins@simons-rock.edu  
Phone Number: (413) 644-4252

Tracey Cameron  
Dean of Students  
Building: Hall College Center  
Email: tcameron@simons-rock.edu  
Phone Number: (413) 644-4711

*Reports of sexual harassment, discrimination on the basis of sex, or sexual misconduct may be directed to:*

Isabel Filkins  
Title IX Coordinator  
Building: Student Union  
Email: titleix@simons-rock.edu  
Phone Number: (413) 644-4252

Daniel Wendekier  
Deputy Title IX Coordinator  
Building: Fischer Science Center  
Email: titleix@simons-rock.edu  
Phone Number: (413) 528-7465

*Reports concerning harassment or discrimination of an employee on the bases of a protected class other than sex may additionally be directed to:*

Phillip Morrison  
Director of Finance and Administration  
Building: Blodgett House  
Email: pmorrison@simons-rock.edu  
Phone Number: (413) 528-7204

Brendan Mathews  
Dean of Faculty  
Building: Hall College Center  
Email: bmathews@simons-rock.edu  
Phone Number: (413) 644-4710

Privacy and Parent Communication: Simon's Rock will make every effort to preserve the privacy of a report made to the Title IX Office. Simon's Rock will not share the identity of any individual who has made a report or is named in a report except as permitted by FERPA, as required by law, or as necessary in order to carry out an Alternative Resolution, investigation, Informal Resolution, or

hearing resulting from these policies and procedures. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

Due to the nature of the Title IX and/or Equity Investigative and Resolution procedures, Simon's Rock recognizes that students may benefit from additional communication with parents and/or guardians. As permitted by FERPA, Simon's Rock may communicate with parents/guardians in the following circumstances, but will usually consult with the student first before doing so:

- When there is a significant and articulable health and/or safety risk to a student;
- When an Academy student who is under the age of 16 seeks supportive resources related to a matter that could rise to the level of a formal policy violation;
- When any Academy student participates in a Title IX and or Equity process as a Complainant, Respondent, or as a Witness;
- When a College student who is under the age of 18 participates in a Title IX and or Equity process as a Complainant or Respondent;
- When any student receives a disciplinary sanction of Social Probation or higher, with some exceptions to be determined by the Title IX Coordinator and/or the Dean of Students or designee.

**Time Limits on Reporting:** There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to Simon's Rock's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible. When notice/complaint is affected by significant time delay, Simon's Rock will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

**Requests for Anonymity:** A Complainant may remain anonymous for the purposes of receiving Supportive Measures. However, upon the filing of a Formal Complaint (either by the Complainant directly or as signed by the Title IX Coordinator) triggering a formal grievance process, the process must commence with both parties receiving written notice of the pertinent details of the incident under investigation, which will include the identity of the Complainant, if known.

**Filing an Anonymous Report:** Anyone with knowledge of a potential violation of these policies may submit an anonymous report by visiting the Title IX Office's page on the Campus Portal.

## C. REPORTING OBLIGATIONS

Any employee with knowledge of sexual harassment or sexual misconduct involving members of the Bard College at Simon's Rock community must notify the Title IX Coordinator. In addition, employees must provide the following information to the reporting individual at the first instance of disclosure of sexual assault, domestic violence, dating violence, or stalking:

- You have the right to make a report to campus safety, local law enforcement, and/or state police, or choose not to report.
- You have the right to report the incident to your institution, Bard College at Simon's Rock.
- You have the right to be protected by Simon's Rock from retaliation for reporting an incident.

- You have the right to receive supportive measures, assistance and resources from Simon's Rock.

Employees are not, however, mandated to disclose when they themselves are a target of harassment or other misconduct under this policy.

Generally, in the College program, the following will not trigger a reporting obligation unless the Complainant clearly indicates that they desire a report to be made or seek a specific response from the College:

- Disclosures in climate surveys,
- Disclosures classroom writing assignments or discussions,
- Disclosures made as human subjects research.

**Privacy vs. Confidentiality:** Most employees cannot offer full confidentiality. Confidentiality refers to the ability of identified confidential resources to not report crimes and violations to law enforcement or campus officials without permission from the disclosing party.

However, campus employees who cannot guarantee confidentiality will maintain privacy to the greatest extent possible. Information disclosed will be shared as necessary. Simon's Rock will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

**Mandated Reporter:** Members of the Simon's Rock community who hold certain positions are considered "mandated reporters" under state law and required by law to report suspected abuse of minors, including sexual abuse, to the Massachusetts Department of Children and Families. These positions include, but are not limited to, teachers, educational administrators, police officers, physicians, nurses, medical treatment providers, social workers, preschool and after-school program staff, child-care providers, clergy, and guidance or family counselors. Reporting suspected abuse to Simon's Rock does not fulfill a mandated reporter's responsibility to report the abuse to the state.

## D. EQUITY POLICY

### 1. Applicability and Scope

*Who This Policy Applies To:* All members of the Simon's Rock community, including students, faculty, staff, and applicants for admission or employment, regardless of sexual orientation or gender identity; and third parties (i.e., visitors, independent contractors, and others who are neither students nor employees), where their conduct is directed toward or otherwise affects Simon's Rock community members.

*Where This Policy Applies To:* Conduct that occurs on campus, including online or electronic conduct initiated or received on campus or through use of College computing or network resources; and Conduct that occurs off campus, including online or electronic conduct, when the conduct: occurs in the context of an employment or education program or activity of Simon's Rock; has, or may have, the effect of continuing adverse effects on campus, including adverse impact on any

member of the Simon's Rock community; has continuing adverse effects in an off campus employment or education program or activity, such as travel abroad, research, or internship programs; or has, or may have, the effect of contributing to a hostile environment in a Simon's Rock program or activity.

## **2. Prohibited Conduct**

### **a. Discrimination**

Bard campus at Simon's Rock does not discriminate in admission, employment, education, or services on the basis of:

- Race;
- Color;
- Sex;
- Creed;
- Age;
- Gender identity or expression;
- Sexual orientation;
- Religion;
- National or ethnic origin;
- Disability;
- Marital status;
- Genetic information;
- Previous military service; or
- Any other class protected under state or federal law.

This policy is consistent with state mandates as well as federal statutes and regulation, including but not limited to, Executive Orders 11246 and 11375 as amended, Massachusetts Executive Order 74, Section 504 of the federal Rehabilitation Act of 1973, the Americans with Disabilities Act, Title IX of the Education Amendments of 1972, and Titles VI and VII of the Civil Rights Act of 1964.

Any member of the Simon's Rock community whose acts deny, deprive, or limit the admission, employment, education, services, benefits, and/or opportunities of any member of Simon's Rock community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above will be considered in violation of this policy.

### **b. Discriminatory Harassment**

Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law. Simon's Rock does not tolerate discriminatory harassment of any employee, student, visitor, or guest. Such conduct violates campus policy if it has the purpose or effect of creating a hostile environment.

For the purposes of this definition, a hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or

opportunities. This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive and objectively offensive.

Simon's Rock will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment."

### **c. Stalking**

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.

- For the purposes of this definition, course of conduct means two or more acts, including, but not limited to acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

### **d. Sexual Misconduct**

Sexual misconduct is a broad term encompassing any unwelcome behavior of a sexual nature that is committed without consent or by force, intimidation, coercion, or manipulation. Sexual misconduct can be committed by a person of any gender, and it can occur between people of the same or different gender. Sexual Misconduct does not include acts covered under the Title IX Sexual Harassment policy. Examples of Sexual Misconduct may include but are not limited to:

1. *Sexual Exploitation*: Sexual exploitation refers to a person taking sexual advantage of another, for their own benefit or for the benefit of anyone other than the person being exploited, without that person's consent.

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

- Invasion of sexual privacy;
  - Prostituting or soliciting another person or causing the prostitution of another person;
  - Causing, or attempting to cause, a person to become incapacitated in order to take sexual advantage;
  - Exposing one's genitals outside of consensual circumstances, or compelling another to expose their genitals;
  - Viewing, video-recording, audio-recording or photographing sexual activity without consent of the all persons engaged in the sexual activity or enabling the same;
  - Allowing third parties to observe consensual or non-consensual sexual acts;
  - Knowingly infecting another person with a sexually transmitted infection or disease;
  - Engaging in voyeurism;
  - Distributing intimate or sexual information about another person without their explicit permission or consent.
2. *Non-consensual Sexual Contact*: Non-consensual sexual contact involves intentional and unwelcome sexual touching, however slight, usually but not necessarily involving contact with genitals, breasts, groin, or buttocks by a body part or object, that is without consent.

This definition includes making someone touch you or themselves on these same body parts or making intentional physical contact in a sexual manner, even if it does not involve contact with or by these body parts.

3. Instances of Sexual Assault Rape; Fondling; Sexual Assault, Non-Forcible; Dating Violence; Domestic Violence; or Stalking as defined in the Title IX Sexual Harassment policy when such conduct occurs off-campus or against a person not in the United States, but nonetheless has the impact of effectively denying a person equal access to Simon's Rock's educational programs or activities.

e. Retaliation:

Retaliation constitutes any action that would intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by 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. Such action will constitute a violation of this policy regardless of whether or not the action itself constitutes discrimination or harassment. Because Simon's Rock is obligated to ensure that the grievance process is not abused for retaliatory purposes, when a counterclaim is filed Simon's Rock will assess whether the allegations in the counterclaim are made in good faith or made for purposes of retaliation.

## **E. TITLE IX SEXUAL HARASSMENT POLICY**

### **1. Applicability and Scope**

*Who This Policy Applies To:* All members of the Simon's Rock community, including students, faculty, staff, and applicants for admission or employment, regardless of sexual orientation or gender identity; and third parties (i.e., visitors, independent contractors, and others who are neither students nor employees), where their conduct is directed toward or otherwise affects Simon's Rock community members.

*Where This Policy Applies To:* Conduct that occurs within Simon's Rock's educational program or activities (as defined below). This includes conduct that occurs on campus, including online or electronic conduct initiated or received on campus or through use of campus computing or network resources; and conduct that occurs off campus, including online or electronic conduct, when Simon's Rock has control over the location or activity.

### **2. Prohibited Conduct**

#### **a. Title IX Sexual Harassment:**

- i. An employee of Simon's Rock conditioning the provision of an aid, benefit, or service of Simon's Rock on an individual's participation in unwelcome sexual conduct;
- ii. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Simon's Rock's education program or activity;

- iii. A single instance of Sexual Assault (rape, fondling, incest or statutory rape), Domestic Violence, Dating Violence, or Stalking.
  - 1. Sexual Assault: Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent including:
    - a. Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. Attempts or assaults to commit rape are also included; however, statutory rape and incest are excluded. This definition of rape includes:
      - i. The slightest penetration of the vagina by a penis 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;
      - ii. 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; or
      - iii. 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. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia, e.g., a finger, bottle, stick etc.
    - b. Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
    - c. Sexual Assault, Non-Forcible: Unlawful, non-forcible sexual intercourse including:
    - d. Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
    - e. Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent, 16 in Massachusetts, in which there is no force or coercion used. Sexual intercourse with a person who is under



the statutory age of consent which is 16 in Massachusetts. There is no force or coercion used in Statutory Rape.

2. Domestic Violence: An act of violence committed:
  - a. By a current or former spouse or intimate partner of the victim;
  - b. By a person with whom the victim shares a child in common;
  - c. By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
  - d. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
  - e. By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the act of violence occurred.
3. Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. For the purposes of this definition:
  - a. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
  - b. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - c. Dating violence does not include acts covered under the definition of domestic violence.
4. Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress. For the purposes of this definition:
  - a. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
  - b. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
  - c. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

**b. Retaliation**

Retaliation constitutes any action that would intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by 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. Such action will constitute a

violation of this policy regardless of whether or not the action itself constitutes discrimination or harassment. Because Simon's Rock is obligated to ensure that the grievance process is not abused for retaliatory purposes, when a counterclaim is filed Simon's Rock will assess whether the allegations in the counterclaim are made in good faith or made for purposes of retaliation.

Acts of Sexual Harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

## **F. ADDITIONAL DEFINITIONS**

### **1. Complainant**

Complainant means an individual who is alleged to be the victim of conduct that could constitute a violation of the Title IX and/or Equity policy. For the purposes of Title IX Sexual Harassment, a Complainant must be participating in or attempting to participate in an Education Program or Activity at Simon's Rock at the time the Formal Complaint is filed.

### **2. Formal Complaint**

Formal Complaint means a document filed by a Complainant or signed by the Title IX Coordinator alleging a violation of the Title IX and/or Equity policy against a Respondent and requesting that Simon's Rock investigate the allegation.

### **3. Respondent**

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute a violation of the Title IX and/or Equity policy.

### **4. Parties**

Refers to Complainant(s) and Respondent(s) involved in a formal grievance process.

### **5. Consent**

Consent must be informed, voluntary, and mutual. Consent , and can be withdrawn at any time. There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress are used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent.

Silence or absence of resistance does not imply consent. Consent to a specific sexual activity cannot be inferred from previous sexual activity, prior sexual relationships, consent to a different sexual activity, or consent to sexual activity with another person. Consent cannot be obtained from an individual who is incapable of giving consent because the person:

- Has a mental, intellectual, or physical disability which limits their capacity to give consent;
- Is under the legal age to give consent;
- Is asleep, “blacked out,” unconscious, or physically helpless;
- Is incapacitated, including through the consumption of alcohol or drugs.

Consent must be established by words or actions that are clear and mutually understandable. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and gauging consent.

The burden of proof of consent or non-consent is not placed on either party involved in a case. Rather, the burden remains on Simon's Rock to determine whether policy has been violated.

## **6. Incapacitation**

Incapacitation is the inability to make informed, rational, reasonable judgments and decisions, because the person lacks the ability to understand their decision. If alcohol or drugs are involved, incapacitation may be measured by evaluating how the substance affects a person's decision-making capacity, awareness, and ability to make informed judgments.

Incapacitation is a state beyond drunkenness or intoxication. The impact of alcohol and drugs varies from person to person; however, warning signs of possible incapacitation include but are not limited to; slurred speech, unsteadiness, impaired coordination, inability to perform personal tasks such as undressing, inability to maintain eye contact, vomiting, and sudden change in emotion.

With regard to consent, the question is whether the Respondent knew, or a sober, reasonable person in the position of the Respondent should have known, that the other person was incapacitated by alcohol or otherwise.

## **7. Coercion**

Coercion is unreasonable pressure used to compel someone to engage in sexual activity against their will. Coercion may include intimidation, manipulation, or threats. Coercion is evaluated by assessing the duration, frequency, and intensity of the verbal and/or physical conduct, as well as the degree of isolation or confinement. When a person makes clear that they do not want to participate in sexual activity, that they want to stop sexual activity, or that they do not want to go past a certain point of sexual interaction, continued pressure can be coercive.

## **8. Hostile Environment**

An intimidating or offensive environment that causes a person to be fearful or a setting that denies, limits, or interferes with a person's ability to participate in or benefit from a program, activity, or job.

## **9. Educational Program or Activity:**

Education Program or Activity broadly includes all operations of Simon's Rock in the United States, including: (a) any academic, extracurricular, research, employment, or other program or activity operated by Simon's Rock; (b) locations, events, or circumstances over which Simon's Rock exercises substantial control over both the Respondent and in which the alleged Title IX Sexual Harassment occurred; (c) any building owned by Simon's Rock; (d) any building owned or controlled by a student organization that is officially recognized by Simon's Rock; and (e) activities occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of, Simon's Rock.

## **10. Title IX Coordinator**

The Title IX Coordinator has the primary responsibility for coordinating Simon's Rock's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy.

## **11. Hate Crime**

A hate crime is motivated by bias and can include the types of incidents described in these policies, but it includes a definable crime, such as: threats of violence, property damage, personal injury, and other illegal conduct. If you think you have been the victim of a hate crime you may, in addition to the reporting mechanisms described herein, file a report with the Massachusetts State Police or local law enforcement agency. What constitutes a criminal act will be defined by the penal code of the jurisdiction in which the misconduct allegedly occurred. The Simon's Rock system and the legal system have investigation processes that work independently of each other and can happen concurrently.

# **G. RESPONDING TO REPORTS**

## **1. Supportive Measures**

Simon's Rock will provide supportive measures to the complainant whether or not a formal grievance process is initiated. In the case that a formal grievance is filed, these supportive measures will also be offered to the Respondent if known. Supportive measures are non-disciplinary, non-punitive individualized services designed to restore or preserve equal access without unreasonably burdening the other party. Confidentiality as to any supportive measures provided will be provided to the extent that maintaining such confidentiality would not impair the ability of Simon's Rock to provide the supportive measures. Simon's Rock will determine the necessity and scope of any supportive measure and has the discretion to issue, modify, or remove any supportive measure or accommodation due to new information or change in circumstances. Supportive measures may be offered at Simon's Rock's discretion regardless of whether or not the alleged conduct would constitute a violation of the Title IX and/or Equity policy. The range of supportive measures may include but are not limited to:

- Restorative response through the Bias Response Team if appropriate;
- Mutual No-Contact Directives;
- Academic accommodations, including a change in class schedule, taking an incomplete, dropping a course without penalty, attending a class via Skype or other alternative means, providing an academic tutor, or extending deadlines for assignments;
- Change of residence hall assignment;
- Change in work assignment or schedule;
- Counseling available to students through our Wellness Center;
- Safety Planning

## **2. Bias Response Team:**

The Bias Response Team is a campus resource designed to help to restore relationships and promote cultural competency education and training on campus. The BRT is a non-judicial, non-investigatory, and non-punitive group of staff, students, and faculty that listens to and advocates for members of the Simon's Rock community who believe they may have experienced

discrimination and/or bias. The Team works to address bias through community engagement, resource information, restorative practices, and education, and serves to make recommendations through those frameworks.

Simon's Rock community members are encouraged to view the BRT as a resource that is available in addition to more formal procedures for filing complaints and addressing issues. The Team does not act as, or in place of, Human Resources or the Title IX Coordinator. The Bias Response Team does not respond to allegations that would raise to the level of a formal policy violation and refers the response and adjudication of those matters to the Title IX Coordinator.

Any documentation related to support provided by the Bias Response Team will not be made available at any investigation or hearing. However, this documentation can be subpoenaed if a criminal investigation is initiated. If any party were to threaten harm to themselves or others, however, information may then be released to the appropriate campus Officials only to safeguard the welfare and safety of parties involved and/or the person threatened. Members of the Bias Response Team will not submit to cross-examination or serve as witness to an investigation concerning conversations conducted in their role as members of the Bias Response Team.

## **H. CONFIDENTIAL RESOURCE PROVIDERS**

Confidential Resource Providers (CRPs) are designated individuals who can connect students with supportive measures and information about the policies and processes within the Title IX Office. If you report an incident to a CRP, that individual will not contact the Title IX Office without your permission. A CRP will:

- Provide required information to the reporting party, including the reporting options and information on the disciplinary process and legal processes.
- Review a reporting party's rights and the institution's responsibilities regarding a protection order, no-contact order and any other lawful orders issued by the institution or court.
- Coordinate on-campus or off-campus sexual assault crisis service center or domestic violence program.
- Arrange possible interim school-based supportive measures to allow the reporting party to change academic, living, campus transportation, or working arrangements in response to the alleged sexual misconduct.

Students may submit a request to meet with a CRP at the Wellness Center via the request form located at [portal.simons-rock.edu](http://portal.simons-rock.edu).

## **I. FILING A FORMAL COMPLAINT**

In cases where Students, Faculty, or Staff have experienced misconduct prohibited under the Title IX Policy and/or the Equity Policy they may file a Formal Complaint by:

- Meeting in person with the Title IX Coordinator and submitting a written and signed Formal Complaint
- Meeting with the Title IX Coordinator and dictating a Formal Complaint, which they then sign
- Emailing a written and signed Formal Complaint to the Title IX Coordinator
- Mailing a written and signed Formal Complaint to the Title IX Coordinator

Isabel Filkins  
 Title IX Coordinator  
 Building: Student Union  
 Email: [titleix@simons-rock.edu](mailto:titleix@simons-rock.edu)  
 Phone Number: (413) 644-4252  
 Address: 84 Alford Road, Great Barrington MA 01230

Simon's Rock has determined that the following administrators are Officials with Authority who may also accept Formal Complaints on behalf of the Title IX Coordinator:

Daniel Wendekier  
 Deputy Title IX Coordinator  
 Building: Fischer Science Center  
 Email: [titleix@simons-rock.edu](mailto:titleix@simons-rock.edu)  
 Phone Number: (413) 528-7465  
 Address: 84 Alford Road, Great Barrington MA 01230

Phillip Morrison  
 Director of Finance and Administration  
 Building: Blodgett House  
 Email: [pmorrison@simons-rock.edu](mailto:pmorrison@simons-rock.edu)  
 Phone Number: (413) 528-7204  
 Address: 84 Alford Road, Great Barrington MA 01230

Brendan Mathews  
 Dean of Faculty  
 Building: Hall College Center  
 Email: [bmathews@simons-rock.edu](mailto:bmathews@simons-rock.edu)  
 Phone Number: (413)644-4710  
 Address: 84 Alford Road, Great Barrington MA 01230

Tracey Cameron  
 Dean of Students  
 Building: Hall College Center  
 Email: [tcameron@simons-rock.edu](mailto:tcameron@simons-rock.edu)  
 Phone Number: (413) 644-4711

In instances where the person who has experienced the alleged conduct is enrolled in the Academy or seeking to access the educational programs of the Academy, Simon's Rock recognizes that the parent or legal-guardian of that student may file a Formal Complaint on behalf of their student and represent their student during any investigation or proceedings.

Any Formal Complaint must be explicitly labeled as a Formal Complaint regardless of the form of transmission. When submitting a Formal Complaint, the Formal Complaint should take care to describe the incident in as much detail as possible including full names (when known), dates, times and locations.

Simon's Rock does not limit the timeframe for filing a Formal Complaint. Individuals may come forward at any time, including after they are no longer enrolled or employed. Simon's Rock may pursue a report made at any time; however, the passage of time may limit Simon's Rock's ability to investigate and respond.

In light of the known circumstances, the Title IX Coordinator may determine that a formal grievance process is necessary even when the Complainant does not want such a formal grievance process. In such cases, the Title IX Coordinator will sign the complaint. The Complainant will still be treated as a party in the grievance process. Factors used in this determination will include:

- Whether there have been other reports about the same individual;
- Whether circumstances suggest that there is a risk that the responding party will commit additional acts of harassment or discrimination;
- Whether there was a weapon or force used in connection with the alleged act;
- Whether Simon's Rock has other means of obtaining relevant evidence;
- Whether the reporting party is a minor;
- Whether available information reveals a pattern of perpetration at a particular location or by a particular group;
- The seriousness and/or severity of the reported misconduct; and
- The right of the responding party to receive information about the allegations in an institutional investigation.

### **Filing a Criminal Report**

Formal Grievance proceedings under this policy are not criminal proceedings. To file a criminal report, individuals may contact:

Great Barrington Police Department  
465 Main Street  
Great Barrington, MA 01230  
Business Line: (413) 528-0306  
For emergencies, dial 911

Massachusetts State Police  
Phone: (508) 820-2300  
470 Worcester Road, Framingham, MA 01702

## **J. PRELIMINARY REVIEW AND NOTIFICATION**

All Formal Complaints will be reviewed by the Title IX Coordinator. At their discretion, the Title IX Coordinator may convene a panel to consider whether or not a Formal Complaint describes a potential violation of either the Title IX policy and/or the Equity policy. Members of this panel may

include but are not limited to: the Deputy Title IX Coordinators, the Director of Finance and Administration, the Vice Provost, the Dean of Students, the Dean of Studies, the Dean of Faculty, and the Dean of Equity and Inclusion. Any member of this panel who is also an eligible Decision-Maker would not be eligible for such an appointment in regards to that matter.

### **1. Acceptance of a Formal Complaint**

If the Title IX Coordinator determines that a Formal Complaint describes a potential violation of the Title IX and/or Equity Policy, the Title IX Coordinator will notify both the Complainant and Respondent. This notification will include:

- Notice of Simon's Rock's Title IX and Equity Policy and Formal Grievance Process.
- Notice of the allegations and sufficient details known at the time the notice is issued, such as the identities of the parties involved in the incident, if known, including the Complainant and the date and location of the alleged incident, if known.
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties may have an Advisor of their choice, who may be, but is not required to be, an attorney.
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which Simon's Rock does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source.
- A statement that Simon's Rock prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- Notice of the grievance process including the possibility of both alternative and informal resolution.
- Notice that if during the course of the investigation additional allegations give rise to additional Formal Complaints, the parties will be notified in writing.

### **2. Ongoing Notice**

If, in the course of an investigation, Simon's Rock decides to investigate allegations about the Complainant or Respondent that are not included in the Notice of Allegations or a new Formal Complaint is submitted in relation to the same matter, the College will notify the parties whose identities are known of the additional allegations. The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

All notices provided throughout the process will be delivered by campus email. Students are therefore expected to remain diligent in checking their campus email each day. Failure to check a campus email account will in and of itself not constitute a reasonable cause for delay.



### **3. Dismissal of Formal Complaint**

Any Formal Complaint in which the alleged conduct does not constitute a violation of these policies will be dismissed but may be addressed under the student code of conduct or employee handbook. Simon's Rock may dismiss any Formal Complaint if at any time:

- The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein,
- The Respondent is no longer enrolled or employed by Simon's Rock, or
- If specific circumstances prevent Simon's Rock from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Further, a complaint alleging Title IX Sexual Harassment (as defined below) will be dismissed for the purposes of Title IX if:

- The alleged conduct did not occur in Simon's Rock's education program or activity;
- The alleged conduct did not occur against a person in the United States; or
- The Complainant is not currently attempting to participate in Simon's Rock's academic program.

Such a dismissal does not preclude action under another provision of the employee handbook, the student code of conduct, or the equity policy.

Upon a dismissal, written notice of the dismissal and reason(s) will be provided simultaneously to the parties and will contain written notice of their right to appeal.

In the interest of preserving a fair process for all involved and the timely resolution of Formal Complaints, instances where a Formal Complaint is dismissed in response to a request to withdraw the Formal Complaint by the Complainant, the Formal Complaint may not be reinstated at a latter date if the matter has already proceeded to investigation at the time that the request to withdraw the Formal Complaint was submitted.

### **K. ADVISORS OF CHOICE**

Both the Respondent and the Complainant have the right to one Advisor of their choice. An Advisor serves as a support person for the parties during investigative meetings and undertakes cross-examination in the case of a live hearing. If requested, the Title IX Coordinator will work with the reporting party and the Respondent to connect each with a faculty or staff member who can act as an Advisor. Advisors are not permitted to advocate for a reporting party or speak on their behalf during any meeting with the investigator or the Title IX Coordinator. During the hearing process. Advisors may not interject, coach, advocate for, or otherwise speak on behalf of the party they represent while that party is being questioned.

Simon's Rock will not intentionally schedule meetings or hearings on dates where the Advisors for all parties are not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

Simon's Rock's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other campus policies apply to matters governed under this Policy, and Simon's Rock cannot agree to extensive delays solely to accommodate the schedule of an Advisor. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. Simon's Rock will not be obligated to delay a meeting or hearing under this process more than five (5) business days due to the unavailability of an Advisor, and may offer the party the opportunity to obtain a different Advisor or utilize one provided by Simon's Rock. The Title IX Coordinator will consider requests made to delay or reschedule a meeting or other proceedings and will make the final determination with respect to that request.

The Advisor's name and relationship to a party (e.g., student, faculty member, family member, attorney, etc.) will be disclosed to the investigator or Decision-Maker 24 hours prior to any meeting with the investigator or Decision-Maker.

## **L. EMERGENCY REMOVAL AND ADMINISTRATIVE LEAVE**

### **1. Emergency Removal**

Simon's Rock retains the authority to remove a Respondent from Simon's Rock's program or activity on an emergency basis, where Simon's Rock (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual, including the Respondent, arising from the allegations of covered sexual harassment justifies a removal. This safety and risk analysis may be performed by or in consultation with Title IX Coordinator, the Director of Wellness, the Dean of Students, the Director of Campus Safety, or any of their designees. Emergency removals include but are not limited to:

- Restricting a student's access to campus as a whole;
- Restricting access to Simon's Rock's campus and educational program as a whole,
- Restricting participation in extracurricular activities, student employment, student organizational leadership, or athletics.

### **2. Safety and Risk Analysis**

When performing a safety and risk analysis, Simon's Rock will consider many factors relevant to the individual circumstances. These factors may include but are not limited to:

- The existence of an immediate threat to the physical health or physical safety of one or more individuals, including threats of physical self-harm.
- The Respondent's propensity, opportunity, and ability to effectuate a stated or potential threat.
- Risk and protective factors;
- Objective evidence;
- Current medical knowledge or information provided by a licensed evaluator.

The determination will be fact-specific and nuanced, subject to a careful evaluation whether appropriate supportive measures are a more appropriate and less restrictive means to negate or sufficiently minimize the likelihood of a threat's occurrence.

If Simon's Rock determines such Emergency Removal is necessary, the Respondent will be provided notice and an opportunity to challenge the decision immediately following the Emergency Removal.

When the Respondent is given notice of the Emergency Removal, such notice will include a written summary of the basis for the emergency removal and the opportunity to appeal the emergency removal through a meeting with the Title IX Coordinator where the Respondent will be given the opportunity to show cause as to why the removal should not be implemented.

In order to avoid conflicts of interest or bias, the appeal will not be heard by the same individual who made the determination of emergency removal. Neither 1) the individual who hears the appeal of the emergency removal determination nor 2) the individual who made the original determination of emergency removal will serve as a Decision-Maker on any hearing resulting from the same circumstances which led to these decisions.

### **3. Administrative Leave**

Simon's Rock retains authority to place a non-student employee Respondent on administrative leave during any Formal Grievance Process, consistent with the Employee Handbook.

## **M. ALTERNATIVE RESOLUTION**

The Alternative Resolution process is designed to eliminate prohibited conduct, prevent its recurrence, and remedy its effects in cases where both a Complainant and Respondent do not wish to pursue an investigation and wish instead to proceed through a non-disciplinary and non-adjudicatory model. When a Complainant initiates a formal grievance process by filing a Formal Complaint and expresses an interest in the Alternative Resolution process, or where a Respondent expressed interest in the Alternative Resolution process following receipt of a Notice of Investigation and Allegations, the Title IX Coordinator may offer an Alternative Resolution instead of proceeding to a Formal Investigation. Where a Respondent expresses interest in such cases, the Title IX Coordinator will provide parties a written notice disclosing:

The requirements of the Alternative Resolution process including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations; Notice of the records that will be maintained or could be shared in regards to the Alternative Resolution.

Factors that Simon's Rock may take into account when determining if a case is eligible for Alternative Resolution include but are not limited to:

- Likelihood of potential resolution
- Power dynamics between the parties
- Safety and Risk Analysis
- Past disciplinary history
- Complexity of the complaint
- Severity of the complaint
- Goals of the parties

Simon's Rock is not responsible for providing an explanation to the parties if it deems a complaint ineligible for Alternative Resolution.

Alternative Resolutions may be facilitated by the Title IX Coordinator or their designee, or jointly by the Title IX Coordinator along with a member of the Bias Response Team. Simon's Rock will not require participation in the Alternative Resolution by any party. At any point before the Alternative Resolution agreement is signed, either party may withdraw from the Alternative Resolution process. A request for an Alternative Resolution may be made at any point up until the conclusion of the investigation.

Before proceeding with an Alternative Resolution, the Title IX Coordinator will obtain the parties' voluntary, written consent to the Alternative Resolution process.

### **1. The Alternative Resolution Process**

Both the Complainant and Respondent must agree to the following terms should they wish to participate in the Alternative Resolution process.

- Both the Complainant and Respondent must participate in individual meetings with the Title IX Coordinator to learn more about the Alternative Resolution Process before proceeding.
- If the resolution facilitator is unable to establish recommendations laid out in a Resolution Agreement that are amenable to both the Respondent and Complainant, the resolution facilitator will deem the case ineligible for Alternative Resolution and suspend the process.
- Either party may be charged with Failure to Comply with a Directive of a Campus Official under the Student Conduct Code for failure to meet the requirements laid out in the Agreement.
- Once an Alternative Resolution Agreement is signed by both parties, parties cannot pursue a Formal Investigation concerning the same incidents of conduct addressed by the Alternative Resolution Agreement.
- Participation in this process is not reflected on a disciplinary record.

### **2. Alternative Resolution Conference and Agreements**

After initial meetings with the Complainant and with the Respondent, the resolution facilitator will have a final meeting with the Complainant and a final meeting with the Respondent in which the resolution facilitator will establish actions, exercises, and/or educational activities to acknowledge and address the harm their actions caused. The Alternative Resolution conference will result in an Alternative Resolution agreement. Activities or exercises required by the resolution agreement may include but are not limited to:

- Informal Restorative Statements including structure letters responding to questions posed by the Complainant to the Respondent. Such statements may include a request to take responsibility for incidents of misconduct and to acknowledge harm that has occurred.
- Educational curriculum
- Counseling Sessions
- Permanent extension of a No Contact Directive
- Restriction from participation in specific clubs and/or organization

- Community service

### **3. Privacy**

All meetings and communications completed throughout an Alternative Resolution process are documented. This documentation includes when and where the meeting took place, who was present at the meeting, and a brief summary of what was accomplished or agreed to during the meeting. The purpose of this documentation is to ensure the integrity of the resolution process. This documentation will not be made available at any investigation or hearing following a suspended Alternative Resolution Process. However, this documentation can be subpoenaed if a criminal investigation is initiated.

The Title IX Office may share records internally and with other campus officials when appropriate. Simon's Rock may release documented information as required by state or federal law. If any party were to threaten harm to themselves or others, information may then be released to the appropriate Campus Officials only to safeguard the welfare and safety of parties involved and/or the person threatened.

Resolution facilitators will not submit to cross-examination or serve as witness to an investigation concerning conversations conducted during the Alternative Resolution process. Resolution facilitators may, however, choose to submit records of such conversations during any determination regarding Emergency Removal or Administrative Leave initiated at any point during the Formal Grievance Process.

## **N. FORMAL INVESTIGATION**

When a Formal Complaint is accepted and is not resolved through Alternative Resolution, Simon's Rock will open a Formal Investigation. Investigations will be conducted by a trained, impartial investigator who may, at times, be assisted by one other investigator. The investigator(s) will either be an employee of Bard College or Bard College at Simon's Rock trained to conduct such investigations; the Title IX Coordinator or Deputy Title IX Coordinator themselves; or a neutral third party selected by the Title IX Coordinator.

The investigator will speak with the parties, as well as all relevant witnesses, and will gather and review all information and evidence. After speaking with each individual, the investigator will document the conversations for the record. The investigator will also gather any available physical or medical evidence, including documents, communications between the parties, and other electronic records each as provided by the parties or witnesses, as appropriate. In gathering such information, the investigator will comply with applicable laws, regulations, and campus policies. As part of the investigation, Simon's Rock will provide an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. The investigation will be thorough, impartial, and fair, and all individuals will be treated with appropriate sensitivity and respect.

### **1. Notice**

Parties whose participation is invited or expected will be given written notice of the date, time, and location of any meeting with the investigator with sufficient time for the party to prepare.

## **2. Evidence Review**

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

Evidence that is relevant, even if that evidence does not end up being relied upon by Simon's Rock in making a determination regarding responsibility;  
Inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins.

Simon's Rock will provide the evidence to each party and each party's Advisor, if any, to inspect and review through an electronic format or a hard copy. Simon's Rock is not under any obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The parties will have ten (10) business days to inspect and review the evidence and submit a written response by email to the investigator. The investigator will consider the parties' written responses before completing the Investigative Report. Simon's Rock will provide copies of the parties' written responses to the investigator to all parties and their advisors, if any.

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the Formal Complaint will not be disclosed, or may be appropriately redacted before the parties' inspection to avoid disclosure of personally identifiable information of other students.

All parties and Advisors must agree to the conditions put forth in the Agreement Regarding Evidence Disclosed (Appendix B.1).

## **3. Follow-up Interviews**

If additional evidence is proposed by either party in response to the Evidence Review or if new witnesses are identified, the investigator may determine that it is necessary to interview further witnesses or that it is necessary to re-interview witnesses and parties involved in the investigation. Summaries of additional interviews will be provided to both parties and they will have ten (10) business days to submit a written response which the investigator will consider prior to completion of the Investigative Report.

## **4. Final Report**

The investigator will create an Investigative Report that fairly summarizes relevant evidence. At least ten (10) business days prior to a formal adjudication, the Title IX Coordinator will provide to

both Complaint and Respondent and their Advisors the Investigative Report in an electronic format or a hard copy for their review and written response.

The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence. Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations) will be referenced in the Investigative Report. All related and relevant evidence will be included in the report's appendices.

The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant.

## **O. INFORMAL RESOLUTION**

The Informal Resolution process is designed to eliminate prohibited conduct, prevent its recurrence, and remedy its effects in cases where both a Complainant and Respondent do not wish to proceed to a formal hearing. Once an investigation has concluded and the Investigative Report has been reviewed by the parties and Advisors, the Title IX Coordinator or their designee may offer an Informal Resolution as an alternative to a formal adjudication of the Formal Complaint when either party expresses an interest in such a process. In such cases, the Title IX Coordinator will provide Parties a written notice disclosing:

The requirements of the Informal Resolution process including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations;  
Notice of the records that will be maintained or could be shared.

Requests from Complainants and Respondents to participate in an Informal Resolution when offered by the Title IX Coordinator must be received during the same ten (10) business days during which the parties are reviewing the final Investigative Report. If one party makes such a request, the other party will be informed and will have three (3) business days to decide if they wish to submit a concurrent request to participate. If both parties do not submit such a request, the Informal Resolution will not proceed and the matter will instead proceed to formal adjudication.

Informal Resolutions may be facilitated by the Title IX Coordinator or their designee, or jointly by the Title IX Coordinator along with a member of the Bias Response Team. Simon's Rock will not require participation in the Informal Resolution by any party.

If both parties request to pursue an Informal Resolution, the resolution facilitator will meet independently with each party to ensure their full understanding of the process. At any point before the Informal Resolution agreement is signed, either party may withdraw from the Informal Resolution process.

In the case that an Informal Resolution process is attempted and then suspended, any days between the commencement of the process and its termination will not count towards the allotted 10 days of evidence review before any formal adjudication without the written consent of both parties. If at any point the resolution facilitator determines that Informal Resolution is no longer appropriate, the resolution facilitator may suspend the process.

The Informal Resolution process will follow the same model as the Alternative Resolution process except for the fact that an Informal Resolution contract can result in disciplinary sanctions when the Respondent admits responsibility. In such cases, the Parties will receive simultaneous written notification of the acceptance of responsibility.

### **1. Administrative Resolution**

When an Informal Resolution results in an agreement to pursue Administrative Resolution, the Title IX coordinator will appoint a decision-maker to determine the Respondent's sanction and other remedies, as appropriate and consistent with institutional policy. The decision-maker will have access to the investigative report and all related evidence. The parties will be given an opportunity to provide impact statements. The parties will receive simultaneous written notification of the decision regarding sanctions and remedies. Sanctions and remedies imposed by a decision-maker during Administrative Resolution are not subject to appeal.

## **P. FORMAL ADJUDICATION: INDIRECT HEARING**

Except for cases involving allegations of Title IX Sexual Harassment affecting participation in the undergraduate educational program at Simon's Rock, adjudication of Formal Complaints will proceed under an indirect hearing process. Simultaneous with the ten (10) days in which they are reviewing the final Investigative Report, the parties will have ten (10) days to submit (i) a written adjudication statement; and (ii) additional written, relevant questions that a party would like to want asked of any party, witness, or investigator to a Decision-Maker (the "Equity Decision-Maker"). The Equity Decision-Maker, joined by two non-voting panelists from the Code of Conduct Committee or from the Adjudicatory Pool (the "Equity Hearing Panel") will then conduct follow up interviews and pose any questions asked by the parties that are determined to be relevant by the Equity Decision-Maker during a live meeting. In most cases, parties and their advisors will be provided with written summaries of answers simultaneous with the delivery of the determination regarding responsibility. In extraordinary circumstances where the content of such answers warrants further review, the decision-maker may determine that it is necessary to provide such written summaries simultaneously with a limited opportunity for follow-up questions from each party may be permitted. A reasonable timeline for such an exchange will be determined at the sole discretion of the Decision-Maker. Both the Equity Decision-Maker and the Title IX Coordinator each have the discretion to shift the adjudication to a live hearing. In the event of such a shift, the Equity Decision-Maker will act as the Title IX Decision-Maker in the live hearing model described below.

### **1. Appointment of the Equity Decision-Maker**

For every case that proceeds to an indirect hearing, the Title IX Coordinator or their designee will designate an Equity Decision-Maker. The Equity Decision-Maker will either be an employee of Simon's Rock trained in adjudications of misconduct, or, at the discretion of the Title IX Coordinator, a neutral third party selected by the Title IX Coordinator or their designee. The Equity Decision-Maker will not be the Title IX Coordinator or the investigator assigned to the same matter.

Should a party wish to object to the Equity Decision-Maker or any of the panelists on the grounds of bias or conflict-of-interest, such notice must be delivered to the Title IX Coordinator within five (5) business days of the hearing



## **2. Evidentiary Standard**

In any formal adjudication under either the Title IX Policy or the Equity Policy, the Respondent's responsibility will be determined by a preponderance of the evidence standard, which is whether the information provided supports a finding that it is "more likely than not" that the Respondent is responsible for the alleged violation(s).

## **3. Notice of Hearing**

At least ten (10) business days prior to the hearing, the Title IX Coordinator or the Chair will send notice of the hearing to the parties including:

- Notice of Simon's Rock's Title IX and Equity Policy and Formal Grievance Process;
- The time, date, and location of any meeting conducted as part of the hearing;
- A list of all those who will attend any meeting conducted as part of the hearing, including the names of the Equity Decision-Maker and panelists.;
- A statement that if any party or witness does not appear at a meeting conducted as part of this hearing, the hearing may continue in their absence at the Title IX Coordinator's discretion;
- Instructions on how to arrange for disability accommodations in regards to the hearing.

## **4. Determination of Relevance**

Only relevant questions may be asked of a party or witness. In determining whether a question is relevant, the Decision-Maker will focus on evidence pertinent to proving whether facts material to the allegations under investigation are more or less likely to be true.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless (1) such questions and 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 (2) 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. This bar on questions and evidence about a Complainant's sexual predisposition or prior sexual behavior does not apply to Respondents, and any such questions, if deemed relevant, may be asked.

Similarly, evidence and information is not relevant if (a) the information protected by a legally recognized privilege; or (b) relates to any party's medical, psychological, and similar records unless the party has given voluntary, written consent. Questions that are duplicative or repetitive may fairly be deemed not relevant and thus excluded.

## **Q. FORMAL ADJUDICATION: LIVE HEARING**

In cases involving allegations of Title IX Sexual Harassment in the undergraduate program at Simon's Rock, the matter will proceed straight to the hearing panel model for adjudication. Hearing panels will be chaired by a Title IX Decision-Maker appointed by the Title IX Coordinator or designee. The Title IX Decision-Maker will either be an employee of Simon's Rock trained in adjudications of Title IX Sexual Harassment under these policies, or, at the discretion of the Title IX Coordinator, a neutral third party selected by the Title IX Coordinator or their designee

The Title IX Decision-Maker, joined by two non-voting panelists from the Code of Conduct Committee or from the Adjudicatory Pool, will convene a hearing. The Title IX Decision-Maker will permit each party's Advisor to ask the other party and any witnesses (including the investigator) all relevant questions and follow-up questions, including those challenging credibility. Cross-examination will never be conducted by a party personally.

### **1. Appointment of Decision-Maker**

For every case that proceeds to a live hearing, the Title IX Coordinator or their designee will designate a Title IX Decision-Maker. The Title IX Decision-Maker will either be an employee of Simon's Rock or Bard College at Simon's Rock trained in adjudications of misconduct, or, at the discretion of the Title IX Coordinator, a neutral third party selected by the Title IX Coordinator or their designee. The Title IX Decision-Maker will not be the Title IX Coordinator or the investigator assigned to the same matter.

Should a party wish to object to the Title IX Decision-Maker or any panelist on the grounds of bias or conflict-of-interest, such notice must be delivered to the Title IX Coordinator within five (5) business days of the hearing;

### **2. Evidentiary Standard**

In any formal adjudication under either the Title IX Policy or the Equity Policy, the Respondent's responsibility will be determined by a preponderance of the evidence standard, which is whether the information provided supports a finding that it is "more likely than not" that the Respondent is responsible for the alleged violation(s).

### **3. Notice of Hearing**

At least ten (10) business days prior to the hearing, prior to the hearing, the Title IX Coordinator or the Chair will send notice of the hearing to the parties including:

- Notice of Simon's Rock's Title IX and Equity Policy and Formal Grievance Process;
- The time, date, and location of the hearing;
- Any necessary instructions pertaining to the use of any technology that will be used to conduct the hearing;
- Information about the right to request that the hearing be conducted virtually to the extent that parties may remain in separate rooms for the duration of the hearing;
- A list of all those who will attend the hearing, including the names of the Decision-Maker and panelists;
- A statement that the hearing will be recorded;
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence at the Title IX Coordinator's discretion;
- A statement that cross examination may only be performed by an Advisor and never by the party directly; and
- Instructions on how to arrange for disability accommodations in regards to the hearing.

### **4. Live Hearing Procedure**

All live hearings will be conducted according to the following:

- Title IX Decision-Maker will open and establish rules and expectations for the hearing;

- The parties will each be given the opportunity to provide opening statements of no more than five minutes;
- Direct examination of parties by their own Advisors will not be permitted;
- Decision-Maker will ask questions of the parties and Witnesses (including the Investigator);
- Each party's advisor will be given the opportunity for live cross-examination after the Title IX Decision-Maker conducts its initial round of questioning;
- During this live-cross examination the Advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.
- During the parties' cross-examination, the Title IX Decision-Maker will have the authority to pause cross-examination at any time for the purposes of asking the Decision-Maker's own follow up questions; and any time necessary in order to enforce the established Rules of Decorum (Appendix A);
- Should a Party or the Party's Advisor choose not to cross-examine a party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Title IX Decision-Maker. A party's waiver of cross-examination does not eliminate the ability of the Title IX Decision-Maker to use statements made by the Party.
- Anyone appearing at the hearing to provide information will respond to questions on their own behalf. No Advisor may answer a question on behalf of a party.

## **5. Determination of Relevance**

Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Decision-Maker will first hear the question and determine whether the question is relevant and explain any decision to exclude a question as not relevant. For the purposes of a timely hearing, parties are encouraged but not required to present relevant questions that a party wants asked of any party or witness to the Title IX Decision-Maker in advance of the hearing. Advisors will not, however, be limited to anythe list of questions submitted in advance.

In determining whether a question is relevant, the Decision-Maker will focus on evidence pertinent to proving whether facts material to the allegations under investigation are more or less likely to be true. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless (1) such questions and 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 (2) 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. This bar on questions and evidence about a Complainant's sexual predisposition or prior sexual behavior does not apply to Respondents, and any such questions, if deemed relevant, may be asked.

Similarly, evidence and information is not relevant if (a) the information protected by a legally recognized privilege; or (b) relates to any party's medical, psychological, and similar records unless the party has given voluntary, written consent.

Cross-examination questions that are duplicative of those already asked, including by the Decision-Maker may be deemed irrelevant if they have been asked and answered

## **6. Explaining Relevance Decision**

Decision-Makers are not required to give lengthy or complicated explanations in support of a relevance determination. Rather, it is sufficient, for example, for a Decision-Maker to explain that a question is irrelevant because the question calls for prior sexual behavior information without meeting one of the two exceptions, or because the question asks about a detail that is not probative of any material fact concerning the allegations.

## **7. New Evidence**

No new evidence, including new witness testimony, may be presented at the hearing. Any evidence or witnesses who were not included in the investigation must be brought to the attention of the investigator prior to the hearing. In the event that such new evidence or new witness is presented, the investigator will re-open the investigation for the limited purpose of including such evidence or witness testimony, which each party shall have the opportunity to review.

## **8. Advisor for the Purposes of Cross-Examination**

Parties may opt to have the same Advisor during investigatory meetings and during cross-examination or may opt for a different Advisor during cross-examination. If a party does not have an Advisor present at the live hearing, Simon's Rock will provide without fee or charge to that party an Advisor to conduct cross-examination on behalf of that party. For the purposes of conducting cross-examination, an Advisor need only be a person willing to conduct this function on behalf of the party. Should a party wish for Simon's Rock to provide such an Advisor, they must inform the Title IX Coordinator five (5) business days before the hearing is scheduled to commence. If a party has not chosen an Advisor or asked that Simon's Rock provide an advisor within (2) business days of a hearing, Simon's Rock will appoint an Advisor for the party.

The Advisor is not prohibited from having a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against the parties to the particular case. The Advisor is not prohibited from being a witness in the matter. If a party does not attend the live hearing, the party's Advisor may appear and conduct cross-examination on their behalf. If neither the party's Advisor nor the party appear at the hearing, Simon's Rock will provide an Advisor to conduct cross-examination of the other party and any witnesses.

## **9. Failure to Appear**

The parties cannot waive the right to a live hearing. Simon's Rock will not threaten, coerce, intimidate or discriminate against any party or witness in an attempt to secure the party's participation in the hearing.

Simon's Rock may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence.

The Title IX Decision-Maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions.

### **10. Virtual Hearings**

Upon a party's request, the live hearing will be conducted with the parties located in separate rooms with technology enabling participants to see and hear each other. Upon the decision of the Title IX Coordinator, any hearing may be conducted virtually via audio and visual conferencing software.

### **11. Recording**

An audio recording of any live hearing will be made available to the parties for review.

### **12. Participant Conduct**

Participants in the live hearing, including Advisors, must conduct themselves appropriately and respectfully towards all other participants. Participants may not act, and Advisors may not question parties or witnesses in a way that may be considered by a reasonable person to be abusive, intimidating, harassing, or disrespectful. Advisors, witnesses, and parties shall be subject to Simon's Rock's Rules of Decorum (Appendix A), and may be removed upon violation of those Rules. The Title IX Decision-Maker, in their sole and absolute discretion, may respond to violations of the Rules of Decorum (Appendix A) by adjourning the hearing and excluding the offending person. Repeat offenders of such conduct may face additional sanctions under other campus policies.

### **13. Time Limitations**

Questioning by a party Advisor of a witness or party may not last longer than two (2) hours. The Decision-Maker, in their sole and reasonable discretion, may allow the Advisor to continue questioning past the two (2) hour mark for any party or witness. Any such extension of time will similarly be granted to the other party's Advisor.

## **R. DETERMINATION OF RESPONSIBILITY**

The Decision-Maker will reach a determination of responsibility by a preponderance of the evidence standard. Once they have reached a determination, they will provide written notice to both parties including:

- Identification of the allegations potentially constituting harassment or discrimination
- 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 method of adjudication.
- Findings of fact supporting the determination
- Conclusions regarding the application this policy to the facts
- For each allegation, a statement of, and rationale for, a determination regarding responsibility;
- A statement of, and rationale for, any disciplinary sanctions Simon's Rock imposes on the Respondent;
- A statement of, and rationale for, whether remedies designed to restore or preserve equal access to Simon's Rock's education program or activity will be provided by Simon's Rock to the Complainant;
- Procedures for appeal

Notice of the determination regarding responsibility will be provided to the parties simultaneously. The determination regarding responsibility becomes final either on the date that Simon's Rock provides the parties with the written determination of the result of an appeal if an appeal is filed. If an appeal is not filed, the determination becomes final on the date by which an appeal would no longer be considered timely. Any remedies or sanctions provided in the determination of responsibility will not take effect until the determination of responsibility becomes final. The Title IX Coordinator is responsible for effective implementation of any remedies.

**Timeline of Determination Regarding Responsibility:** If there are no extenuating circumstances, the determination regarding responsibility will be issued by Simon's Rock within fifteen (15) business days of the completion of the hearing.

## **S. SANCTIONS**

*The following sanctions may be imposed following a formal adjudication in regards to a student Respondent:*

**Disciplinary Warning:** A warning letter will be sent to the student via their Simon's Rock email address, informing them that their behavior violated campus policy and therefore is not acceptable. Multiple disciplinary warnings may lead to social probation/loss of privileges or other additional disciplinary actions.

**Social Probation:** Probation is a sanction imposed for serious or repeated misconduct. This sanction places a student Respondent on notice that their behavior is unacceptable and must change; otherwise, the Respondent will face termination or expulsion. The probationary period may range from one semester through graduation and – depending on circumstances and the student Respondent's previous disciplinary record – may come with additional conditions or consequences.

**Campus Service:** A student Respondent may be assigned a predetermined number of campus work hours, to be overseen by the Dean of Students or their designee. If the student Respondent fails to complete these service hours within the time allotted, additional hours or a more severe sanction may be levied including more hours, loss of privileges, suspension, or expulsion.

**Loss of Privileges:** A student Respondent may lose one or more of the following privileges: operating a motor vehicle on campus; hosting guests on campus; remaining on campus during breaks; attending commencement proceedings; or other privileges as deemed appropriate.

**Suspension:** Disciplinary suspension is total separation from Simon's Rock for a period of one full semester, two full semesters, three full semesters, or four full semesters. A sanction of suspension may affect a student Respondent's future on-campus housing, scholarships, federal financial aid, or study abroad opportunities but not scholarships awarded by Simon's Rock. Suspension includes separation from classes, activities, services, facilities, and grounds for the duration of the suspension period. Readmission following a disciplinary suspension is not automatic but is at the will and discretion of Simon's Rock. The Academic Affairs office manages the readmission process, how suspension affects financial aid and can provide further information about the process and deadlines upon request. Again, suspension does not affect scholarships awarded by Simon's Rock.

**Expulsion:** Expulsion is a complete and permanent separation from Simon's Rock. Such action will be documented via letter, generally emailed to the student, parents or guardians, Academic Advisors, and other department heads as appropriate. For information about departing campus after expulsion, see Vacating Campus for Leave or Withdrawal.

Sanctions may also be accompanied by: a change in academic or employment schedule, change in residence, removal from on campus or institution-owned housing, a permanent No Contact Order, educational programming, counseling, a combination of these, or any sanction deemed just and proper.

Sanctions may also be accompanied by the following conditions:

- Educational programming
- Counseling
- Required letter acknowledging impact of the misconduct

The following sanctions may be imposed following a formal adjudication in regards to an employee Respondent:

For employees, disciplinary action may call for any of four steps—verbal warning, written warning, suspension with or without pay, or termination of employment—depending on the severity of the problem and the number of occurrences. There may be circumstances when one or more steps are bypassed. Progressive discipline means that, with respect to most disciplinary problems, these steps will normally be followed: a first offense may call for a verbal warning; a next offense may be followed by a written warning; another offense may lead to a suspension; and, still another offense may then lead to termination of employment.

Simon's Rock recognizes that there are certain types of employee problems that are serious enough to justify either a suspension, or, in extreme situations, termination of employment, without going through the usual progressive discipline steps.

Sanctions may also be accompanied by the following restrictions:

- Change in employment schedule
- Loss of supervisory or oversight responsibilities
- Removal from on campus or institution-owned housing,
- Permanent No Contact Order

Sanctions may also be accompanied by the following conditions:

- Educational programming
- Counseling
- Required letter acknowledging impact of the misconduct

## **T. APPEAL PROCEDURE**

Both parties will be offered an appeal from a determination regarding responsibility or non-responsibility, and from Simon's Rock's dismissal of a Formal Complaint or any allegations therein, on the following bases:

- Procedural irregularity that affected the outcome of the matter;
- 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
- That Title IX Coordinator, investigator(s), or Title IX Decision-Maker 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.

Dissatisfaction with the outcome does not constitute grounds for appeal.

The Title IX Coordinator or designee will appoint an appeal officer to determine the viability of the Appeal, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or Decision-Maker in the same matter. Should an appeal be filed on the grounds that the Title IX Coordinator was biased, the Vice-Provost will designate an appeal officer to determine the viability of the appeal. In either case, anyone who has served as the Decision-Maker for a particular matter will not be appointed as the appeal officer for that same matter.

Parties will have five (5) business days to file an appeal following receipt of the written notice of determination of responsibility. Appeals must be filed in writing and describe the eligible grounds on which the party wishes to appeal. In order to effectuate an appeal, the parties may request to review a copy of the Investigative Report, any adjudication statements, and the live hearing audio recording, as applicable, all pursuant to campus policy governing privacy and access to personal information within five (5) business days from the date of the outcome notification. Parties may request to have the time period for submitting an appeal extended to five (5) business days from the date of their review of the audio- recording of the hearing. The Title IX Coordinator or designee will notify the other party in writing when an appeal is filed.

If an appeal is determined by the appeal officer to meet one or more of the bases stated above the appeal will be shared with both parties and both will have five (5) business days to submit a written statement in support of, or challenging, the outcome. If both the Complainant and the Respondent appeal, the appeals will be considered concurrently.

The appeal officer will consider the appeal, the statements filed by the parties upon the acceptance of the appeal, and any documentation or evidence pertaining to the original investigation and hearing. The purpose of the appeal is not to re-weigh evidence. If an appeal is granted, the appeal officer will either:

- Issue a decision advising that the appeal was granted and which, if any, sanctions or determinations of responsibility are upheld, overruled, or modified; or
- Remand the case for a new hearing or further investigation if the appeal officer determines that new evidence should be considered or that a procedural error has occurred

If an appeal is denied or results in no alteration of the original outcome, the parties will be notified and the matter will be closed. When an appeal is remanded for a new hearing, the finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.

## **T. AMNESTY, EXCLUSIONS, AND OTHER PROVISIONS**



1. Amnesty: Simon's Rock encourages reporting and seeks to remove any barriers to reporting by making the procedures for reporting transparent and straightforward. An individual who reports misconduct under either the Equity Policy or the Title IX Policy, either as a Complainant or a third party witness, will not be subject to disciplinary action by Simon's Rock for either 1) their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk or 2) any other minor policy violations of the Student Code of Conduct or Employee handbook as deemed appropriate by the Title IX Coordinator. Simon's Rock may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs. The amnesty policy applies to Simon's Rock's student conduct process and processes pursuant to the Employee Handbook. The Title IX Coordinator, Deputy, or designee will determine what policy violations will be considered "minor" and therefore eligible for amnesty in this context.
2. Ensuring Impartiality: Any individual materially involved in the administration of the resolution process may not have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest. The Title IX Coordinator will determine whether the concern is reasonable and supportable. If supportable, the Title IX Coordinator will remove that person from the process.
3. False Allegations and Evidence: Deliberately false and/or malicious accusations under this policy will be subject to appropriate disciplinary action.
4. External Remedies: Members of the Simon's Rock community are always subject to local, state, and federal laws, and nothing in these procedures is intended to limit or postpone the right of an individual to file a complaint or charge with appropriate federal, state, or local departments or agencies. An individual is not required to use this complaint resolution procedure before pursuing other remedies. Inquiries or complaints that involve potential violations by Simon's Rock may also be referred to: Department of Education, Office of Civil Rights, 617-289-0111; The Equal Employment Opportunity Commission, 800-669-4000; and The Massachusetts Commission Against Discrimination, 413-739-2145.
5. Reasonably Prompt Timeframes: Simon's Rock will attempt to resolve a Formal Grievance process within ninety (90) business days. Both parties will be informed, in writing, if a reasonable delay is to occur. Each party may request a one-time delay in the Formal Grievance Process of up to five (5) days for good cause provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties. For example, a request to take a five (5) day pause made an hour before a hearing for which multiple parties and their Advisors have traveled to and prepared for shall generally not be granted, while a request for a five (5) day pause in the middle of investigation interviews to allow a party to obtain certain documentary evidence shall generally be granted. The Title IX Coordinator shall have sole judgment to grant further pauses in the process.
6. Disability Accommodations: This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for

disclosed disabilities to the Title IX Coordinator at any point before or during the Formal Grievance Process that do not fundamentally alter the Process.

The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the parties, even where the parties may be receiving accommodations in other institutional programs and activities. If a party or Advisor discloses a disability under the Americans with Disabilities Act (ADA) or Section 504 that requires accommodations, Simon's Rock will work with that party or Advisor to provide a reasonable accommodation. Parties or Advisors may contact the Title IX Coordinator to disclose a disability and request accommodations. Disclosures and requests must be made timely. Simon's Rock will agree to short delays to ensure access for a covered disability, but this must not be used as a tactic for delay of the proceedings.

7. Consolidation of Investigations: The Title IX Coordinator reserves the right to consolidate Formal Complaints 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 arise out of the same facts or circumstances. The Title IX Coordinator reserves the right to consolidate investigations of a Formal Complaint with investigations under the student code of conduct where the allegations arise out of the same facts or circumstances. If the alleged conduct, if true, includes conduct that would constitute Title IX Sexual Harassment and conduct actionable under the Equity Policy, the Title IX hearing process may be applied in the investigation and adjudication of all of the allegations. When the same set of facts and circumstances gives rise to both a potential violation of the bullying policy in the Academy and a potential violation of the Equity and/or Title IX policies, the investigation may be consolidated and conducted according to the procedures set forth herein.
8. Effect of Legal Proceedings: Because the standards for finding a violation of criminal law differ from the standards for finding a violation of these policies, criminal investigations are not determinative of whether misconduct, for purposes of these policies, has occurred. Conduct may constitute misconduct under these policies even if law enforcement agencies lack sufficient evidence of a crime or decline to prosecute. The filing of a complaint of misconduct under these policies does not depend on any criminal investigation or proceeding and, except in limited and extenuating circumstances, Simon's Rock will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation; to implement supportive measures; or to implement disciplinary proceedings.
9. Withholding Diploma: Simon's Rock may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending against them. Such action will be subject to the same form of appeal as an Emergency Removal.
10. Withdrawal While Charges Pending: Should a student Respondent permanently withdraw from Simon's Rock with allegations pending, Simon's Rock will no longer have jurisdiction and the process will end. The student Respondent who withdraws or leaves while the process is pending may not return to Simon's Rock. The student's disciplinary record will reflect that the student Respondent withdrew with charges pending. Simon's Rock will continue to provide supportive measures to the Complainant.

11. Recordkeeping: Simon's Rock will maintain for a period of seven years records of any actions, including any supportive measures, taken in response to a report or Formal Complaint of harassment or discrimination. Additionally, Simon's Rock will maintain for a period of seven years records of each investigation including:

- Any determination regarding responsibility;
- Any audio recording of any hearing;
- Any disciplinary sanctions imposed on the Respondent;
- Any remedies provided to the Complainant designed to restore or preserve equal access to Simon's Rock's education program or activity;
- Any appeal and the result therefrom;
- Any informal or Alternative Resolution and the result therefrom.

These records will include those resulting from truncated investigations that led to no adjudication because the acts alleged did not constitute a violation of these policies and in which the Formal Complaint (or allegation therein) was dismissed.

12. Recording: No unauthorized audio or video recording of any kind is permitted during any meeting held pursuant to the procedures outlined in this policy including investigation interviews.

13. Federal Timely Warning Obligations: Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, Simon's Rock must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community. Simon's Rock will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

14. Federal Statistical Reporting Obligations: Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act) including homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson; hate crimes; domestic violence, dating violence, and stalking; arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations. All personally identifiable information is kept private in Clery reports.

15. Academic Freedom: These policies are not intended to restrict teaching methods or freedom of expression, nor will it be permitted to do so. Offensiveness of conduct, standing alone, is not sufficient for the conduct to constitute prohibited misconduct. The conduct must be sufficiently serious to interfere with an individual's ability to participate in employment or educational programs and activities from both a subjective and objective perspective.

16. Revision of this Policy and Procedures: These policies and procedures may be amended at any time. Any amendments will be published widely to the Simon's Rock community.

## **U. APPENDIX B.1: Rules of Decorum Concerning Hearings with Cross Examination**

*Note: While the following language refers to Title IX hearings, these Rules will be understood to apply to any hearing that is conducted under the live hearing model.*

Title IX hearings are not civil or criminal proceedings, and are not designed to mimic formal trial proceedings. They are primarily educational in nature.

At base, these Rules of Decorum require that all parties, advisors of choice, and staff treat others who are engaged in the process with respect.

The rules and standards apply equally to all parties and their Advisors regardless of sex, gender, or other protected class, and regardless of whether they are in the role of Complainant or Respondent.

Rules of Decorum: The following Rules of Decorum are to be observed in the hearing and applied equally to all parties (meaning the Complainant and Respondent) and advisors:

- Questions must be conveyed in a neutral tone.
- Parties and Advisors will refer to other parties, witnesses, advisors, and staff using the name and gender used by the person and shall not intentionally mis-name or mis-gender that person in communication or questioning.
- No party may act abusively or disrespectfully during the hearing toward any other party or to witnesses, advisors, or Decision-Makers.
- While an Advisor may be an attorney, no duty of zealous advocacy should be inferred or enforced within this forum.
- The advisor may not yell, scream, badger, or physically “lean in” to a party or witness’s personal space. Advisors may not approach the other party or witnesses without obtaining permission from the Decision-Maker.
- The Advisor may not use profanity or make irrelevant ad hominem attacks upon a party or witness. Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.
- The Advisor may not ask repetitive questions. This includes questions that have already been asked by the Decision-Maker or the Advisor in cross-examination. When the Decision-Maker determines a question has been “asked and answered” or is otherwise not relevant, the advisor must move on.
- Parties and Advisors may take no action at the hearing that a reasonable person in the shoes of the affected party would see as intended to intimidate that person (whether party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.

Warning and Removal Process: The Decision-Maker shall have sole discretion to determine if the Rules of Decorum have been violated. The Decision-Maker will notify the offending person of any violation of the Rules.

Upon a second or further violation of the Rules, the Decision-Maker shall have discretion to remove the offending person or allow them to continue participating in the hearing or other part of the process.

Where the Decision-Maker removes a party's Advisor, the party may select a different Advisor of their choice, or accept an Advisor provided by Simon's Rock for the limited purpose of cross-examination at the hearing. Reasonable delays, including the temporary adjournment of the hearing, may be anticipated should an Advisor be removed. A party cannot serve as their own Advisor in any circumstance.

The Decision-Maker shall document any decision to remove an Advisor in the written determination regarding responsibility.

Evidence of violation(s) of these policies will be gathered by the Title IX Coordinator. The Advisor accused may provide an explanation or alternative evidence in writing for consideration by the Director of Finance and Administration for cases involving employees. Such evidence or explanation is due within fifteen (15) business days of receipt of a notice of a charge.

The finding shall be issued in writing to all parties and Advisors within thirty (30) business days unless extended for good cause. There is no appeal of this finding.

Relevant Questions Asked in Violation of the Rules of Decorum: Where an Advisor asks a relevant question in a manner that violates the Rules, such as yelling, screaming, badgering, or leaning-in to the witness or party's personal space, the question may not be deemed irrelevant by the Decision-Maker simply because of the manner it was delivered. Under that circumstance, the Decision-Maker will notify the Advisor of the violation of the Rules, and, if the question is relevant, will allow the question to be re-asked in a respectful, non-abusive manner by the Advisor (or a replacement Advisor, should the Advisor be removed for violation of the Rules).

## **V. APPENDIX B.2: Agreement Regarding Evidence Disclosed**

What does this Agreement cover?

This Agreement governs access to evidence as specifically provided for under the Title IX and Equity Policies and Procedures.

The Agreement does not prohibit the Parties from generally discussing the allegations under investigation with a parent, friend, or other source of emotional support, or with an advocacy organization, nor otherwise prohibit the Parties from speaking with their Advisor or Advisors about the facts and evidence of this case.

However, this Agreement clarifies that the Parties may not discuss information that does not consist of the allegations under investigation, including evidence related to the allegations that has been collected and exchanged between the Parties and their Advisors during the investigation, or the Investigative Report summarizing relevant evidence sent to the Parties and their Advisors.

This Agreement shall survive any amendments to or withdrawal of the Title IX Final Rule published by the U.S. Department of Education in the Federal Register on May 19, 2020 and/or any

amendments to or withdrawal of campus policy. It is binding upon heirs and assigns. It may not be revoked.

#### Parties are Responsible for their Advisors' Conduct

Parties are responsible for themselves, their Advisor or Advisors, anyone who has access to their computers or other devices that may be used to access the evidence and records covered by this case, and anyone who has access to their Advisor's computers or other devices that may be used to access the evidence and records covered by this case. Penalties for violations, whether knowing or negligent, include sanctions under other provisions of the Code of Conduct, and for Advisors, ineligibility for a term or permanent ineligibility to serve as an Advisor of Choice in future cases.

The rules and standards apply equally to all parties and their Advisors regardless of sex, gender, or other protected class, and regardless of whether they are in the role of Complainant or Respondent.

#### Waiver of Disclosure to Advisors

By default, access to records will be shared separately with parties and Advisors who have been designated in writing by the party. If the party DOES NOT want the records shared with their Advisor, they must indicate such a request in writing to the Title IX Coordinator. If the party does so, they may not share or disclose the records to their Advisor or any other person.

#### Evidence Sharing Process

Simon's Rock will provide access to the Investigation Report and Evidence prior to the hearing. Access to the records will be provided by the Title IX Coordinator. Parties and Advisors are barred from printing, copying, taking photos or videos of the screen, audio or video recording a reading of the material, or otherwise using analog or technological methods, known or unknown to capture the content of the records.

Upon request, Simon's Rock shall provide paper copies of the records at a hearing which may be utilized by parties and Advisors.

#### Security and Confidentiality Protocols

By signing below, the party or Advisor is agreeing that they will maintain a password or other security on any device that they are using to access the records, and that they will not share or disclose access to the records or their password or security process used to access the records to any person, including family, friends, those with whom they live, witnesses, other parties, or their Advisor/Advisee. Each party and Advisor shall receive a separate link and links should not be shared or forwarded to anyone.

Further, parties and Advisors agree that they will not physically share the space for review with any other person with the limited exception that Advisors may physically share the space looking at the records with other persons in their professional capacity who are assisting them in preparing for their role as an Advisor in this case (for instance, an Associate in a law firm). The Advisor, and the party in turn, is responsible for that additional person or persons who access the content alongside the Advisor.

#### Disability Accommodations

If a Party or Advisor discloses a disability under the Americans with Disabilities Act (ADA) that requires a different method of providing access to the records in place, Simon's Rock will work with that Party or Advisor to provide reasonable accommodations pursuant to the Policy.

Discipline and Sanctions for Violations of the Agreement

If Simon's Rock learns of a re-disclosure, it may bring charges under the Student Code of Conduct or Employment Handbook for Parties or Advisors, may review the Degree or credits earned of former students/alumni, and may undergo a process to bar permanently or temporarily Advisors from serving in that role.