

## **APPENDIX B: EQUITY AND TITLE IX: POLICY AND PROCEDURE**

NOTE: Bard Academy and Bard College 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 this Policy, "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**

Simon's Rock expects 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. Additionally, all persons have the right to notify campus safety, local law enforcement, and/or state police; to be assisted by campus authorities in notifying law enforcement authorities if the individual so chooses; and to decline to notify such authorities. Students also have the right to receive assistance from appropriate Simon's Rock personnel in accessing off-campus resources to assist them in initiating legal proceedings in family court or civil court.

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

Lauren Gretina  
Interim Title IX Coordinator  
Building: Bard Annandale Campus  
Email: [titleix@bard.edu](mailto:titleix@bard.edu)  
Phone Number: (413) 644-4252

Sarah Porter-Liddell  
Dean of Students and Equitable Community  
Building: Livingston Student Union  
Email: [sporterliddell@simons-rock.edu](mailto:sporterliddell@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:*

Lauren Gretina  
Interim Title IX Coordinator  
Building: Bard Annandale Campus  
Email: [titleix@bard.edu](mailto:titleix@bard.edu)  
Phone Number: (413) 644-4252

Monk Schane-Lydon  
Deputy Title IX Coordinator  
Building: Daniel Arts Center  
Email: [mschanelydon@simons-rock.edu](mailto:mschanelydon@simons-rock.edu)  
Phone Number: (413) 528-7277

*Reports concerning harassment or discrimination of or by 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](mailto:pmorrison@simons-rock.edu)

Brendan Mathews  
Dean of Faculty  
Building: Hall College Center  
Email: [bmathews@simons-rock.edu](mailto:bmathews@simons-rock.edu)

Phone Number: (413) 528-7204

Phone Number: (413) 644-4710

## **1. Student Bill of Rights**

All Students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these policy violations are committed, or should have acted in a different manner to avoid such policy violations;
7. Describe the incident to as few institutional representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.
12. Be presumed not responsible for the alleged conduct until a determination of responsibility is made at the conclusion of the grievance process.

## **2. 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 a Supportive Measure, Investigation, or hearing resulting from this policy and procedure. 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 Investigative and Hearing 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;
- Where the nature of the report necessitates a mandated report of sexual abuse to the state of Massachusetts;
- 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 policy violation;
- When any Academy student participates in a Title IX and 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 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 and Equitable Community or designee.

### **3. 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..

### **4. Requests for Anonymity**

A Complainant may, in certain circumstances, remain anonymous for the purposes of receiving Supportive Measures. However, upon the filing of a Complaint, triggering the grievance process, both parties will receive written notice of the pertinent details of the incident under investigation, which will include the identity of the Complainant, if known.

### **5. Filing an Anonymous Report**

Anyone with knowledge of a potential violation of this policy may submit an anonymous report by visiting the Title IX Office's page on the Campus Portal.

### **6. 24/7 Reporting Access.**

Community members may contact Campus Safety to speak with a Campus Safety Officer in order to file a report 24/7. When classes are in session, students may also request to speak with a Confidential Resource Provider. In all such circumstances, the reporting community member will be given information regarding their options, including the importance of preserving evidence and obtaining a sexual assault forensic examination. Campus Safety Officers will provide privacy, but will need to inform the Title IX Coordinator regarding the disclosure. Confidential Resource Providers will maintain confidentiality pursuant to college policy and state reporting requirements and will not need to inform the Title IX Coordinator regarding the disclosure.

## **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 who are designated as Campus Safety Authorities under the CLERY Act 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 mandate 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 in classroom writing assignments or discussions,
- Disclosures made as human subjects research.

### **1. 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.

### **2. 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. TITLE IX and 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 College 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;
- Natural or protective hairstyles historically associated with race; 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 the 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. 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 their age or because of his/her temporary or permanent mental or physical incapacity.
- c. Sexual Assault, Non-Forcible: Unlawful, non-forcible sexual intercourse including:
- i. Incest: Sexual intercourse between persons who are related to each - other within the degrees wherein marriage is prohibited by law.
  - ii. 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.
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. 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. Examples of Sexual Misconduct may include but are not limited to:

- i. *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.
- ii. *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.

### **c. 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. 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 Equity policy.

## **2. Complaint**

Complaint means an oral or written request to Simon's Rock that objectively can be understood as a request for Simon's Rock to investigate and make a determination about alleged discrimination under this Policy.

## **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 Equity policy.

## **4. Parties**

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

## **5. Consent**

Consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions. For behavior that is classified as sexual activity as defined below, consent must be affirmative which means that those words or actions create clear permission regarding willingness to engage in the sexual activity. In all circumstances, the following principles underscore the definition of Consent and Affirmative Consent:

- Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and gauging consent.
- Silence or lack of resistance, in and of itself, does not demonstrate consent.
- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.
- Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent.

- Consent cannot be obtained when a person has a mental, intellectual, or physical disability which limits their capacity to give consent or is under the legal age to give consent. The legal age of consent for non-penetrative sexual touching in Massachusetts is 14. The legal age of consent for penetrative sexual activity in Massachusetts is 16.
- The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

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. Sexual Activity**

Sexual Activity is defined as:

- Contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;
- Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
- The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
- The intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

## **7. Incapacitation**

Incapacitation is the inability to make informed, rational, reasonable judgments and decisions, because the person lacks the ability to understand their decision. Someone who is unconscious, asleep, or involuntarily restrained cannot consent to sexual activity. 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.

Incapacitation is determined by a student conduct or investigation process based on available evidence, acknowledging that in almost no cases will scientific evidence of alcohol or drug level (such as a breathalyzer taken at the time of the assault) be available. There is no single standard or number of drinks that leads to incapacitation. This level varies for different people, and may depend in part on their age, gender, height, weight, metabolism and whether and how much they

have recently eaten. This provision does not mean that individuals cannot affirmatively consent to sexual activity or contact when they have been drinking or using drugs. Such individuals may still affirmatively consent through words or actions that clearly indicate interest in engaging in the activity.

## **8. 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.

## **9. 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.

## **10. Title IX Coordinator**

The Title IX Coordinator or their designee 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. Decision-Maker**

The 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. The Decision-Maker is responsible for overseeing the hearing, maintaining an orderly, fair, and respectful hearing. The Decision-Maker will ask relevant questions of any party or witness during the hearing.

## **12. Investigator**

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; or a neutral third party selected by the Title IX Coordinator.

## **13. Hate Crime**

A hate crime is motivated by bias and can include the types of incidents described in this policy, 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.

#### **14. Bystander**

Bystander means a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of an institution.

## **F. RESPONDING TO REPORTS**

### **1. Supportive Measures**

Simon's Rock will provide supportive measures to the complainant whether or not a grievance process is initiated. In the case that a 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 Equity policy. The range of supportive measures may include but are not limited to:

- Mutual No-Contact Directives;
- Academic accommodations, including a change in class schedule, taking an incomplete, dropping a course without penalty, attending a class via Zoom 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

Both the Respondent and the reporting individual shall, upon request and consistent with the Simon's Rock's policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any such supportive measure and accommodation that directly affects them, and shall be allowed to submit evidence in support of their request.

Within five (5) calendar days of receiving notice of any supportive measure, any party may seek to modify or reverse the decision regarding the implementation of any supportive measure

applicable to them, if the decision to provide, deny, or modify the supportive measure is inconsistent with the definition above. Students may also seek to modify supportive measures in the event of a material change of circumstances.

## **2. Mutual No-Contact Directives**

When the Respondent or Complainant is a student, the Complainant or Respondent may request that Simon's Rock issue a "no contact order" consistent with institution policies and procedures, whereby continued intentional contact with the other party would be a violation of institutional policy subject to additional conduct charges.

Simon's Rock may establish an appropriate schedule for the Respondent and Complainant to access applicable institution buildings and property at a time when such buildings and property are not being accessed by the other party.

Both the Respondent and the Complainant shall be afforded a prompt review, reasonable under the circumstances, of the need for and terms of a no contact order, including potential modification, and shall be allowed to submit evidence in support of his or her request.

## **3. Protective Orders**

No contact orders are institutional documents that do not have the legal effect of orders of protection, which are obtained through a court. Students have the right to be assisted in obtaining a protective order or, if outside of the Commonwealth of Massachusetts, an equivalent protective or restraining order.

When a student, either Complainant or Respondent, receives a copy of an order of protection or equivalent, they will be given an opportunity to seek assistance in connecting with an appropriate resource, either on-campus through Campus Safety or off-campus through the Elizabeth Freeman Center, to explain the order and answer questions about it, including information from the order about the accused's responsibility to stay away from the protected person or persons.

## **4. Amnesty**

The health and safety of every student is of utmost importance. Bard College and Bard Academy at Simon's Rock recognize that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Bard College and Bard Academy at Simon's Rock strongly encourage students to report any potential domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to Bard College and Bard Academy at Simon's Rock's officials or law enforcement will not be subject to Bard College and Bard Academy at Simon's Rock's code of conduct action for violations of alcohol and/or drug use



policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

Further, such amnesty will be additionally extended 1) to protect any bystander acting in good faith or a reporting individual acting in good faith that discloses a potential violation of any other provision contained within the Title IX and Equity policy and 2) to provide amnesty for 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.

## **G. 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).

## **H. FILING A COMPLAINT**

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

- Meeting in person with the Title IX Coordinator
- Emailing a written Complaint to the Title IX Coordinator

- Mailing a written Complaint to the Title IX Coordinator

Lauren Gretina  
Interim Title IX Coordinator  
Building: Bard Annandale Campus  
Email: [titleix@bard.edu](mailto:titleix@bard.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 Complaints on behalf of the Title IX Coordinator:

Monk Shane-Lydon  
Deputy Title IX Coordinator  
Building: Daniel Arts Center  
Email: [titleix@simons-rock.edu](mailto:titleix@simons-rock.edu)  
Phone Number: (413) 644-4252  
Address: 84 Alford Road, Great Barrington MA 01230

Jacob Testa  
Interim Deputy Title IX Coordinator  
Building: Bard Annandale Campus  
Email: [titleix@simons-rock.edu](mailto:titleix@simons-rock.edu)  
Phone Number: (413) 528-7277  
Address: 84 Alford Road, Great Barrington MA 01230

Sarah Porter-Liddell  
Dean of Students and Equitable Community  
Building: Livingston Student Union  
Email: [sporterliddell@simons-rock.edu](mailto:sporterliddell@simons-rock.edu)  
Phone Number: (413) 644-4711

Brendan Mathews  
Dean of Faculty and Curricular Development  
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

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

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 Complaint on behalf of their student and represent their student during any investigation or proceedings.

When submitting a Complaint, the 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 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.

#### *Requests for Confidentiality*

A reporting party may disclose an incident but request confidentiality, that no investigation into the particular incident be pursued, and/or that no action through Simon's Rock's process be taken. In such instances, if the Title IX Coordinator has made an initial assessment that the conduct as alleged would constitute Prohibited Conduct, the Title IX Coordinator will assess whether the conduct alleged by the complainant presents an imminent and serious threat to the health or safety of any individual, or prevents Simon's Rock from ensuring equal access based on sex to Simon's Rock's education program or activity.

A range of factors may be considered in making this assessment, including, but not limited to:

- The complainant's request not to proceed with a Complaint or to remain anonymous;
- The complainant's reasonable safety concerns regarding the initiation of a Complaint;
- Whether the alleged act was committed with a weapon;
- The risk that additional acts of Prohibited Conduct would occur if a Complaint were not initiated;
- The severity of the alleged conduct, including whether, if Prohibited Conduct were found to have occurred, the sanction would require the removal of the respondent or imposition of another disciplinary sanction to end the conduct and prevent its recurrence;
- The age and relationship of the parties, including whether the respondent is a Simon's Rock employee;
- The scope of the allegations, including whether there is a pattern of ongoing conduct or similar conduct is alleged to have affected multiple individuals;
- The availability of evidence; and
- Whether Simon's Rock could end the alleged conduct or discrimination and prevent its recurrence without initiating the grievance procedures in this policy.

The presence of one or more of these factors could lead Simon's Rock to investigate and, if appropriate, pursue action against the accused party. Simon's Rock will notify the reporting party and may address any safety concerns of the reporting party or others by implementing supportive measures prior to initiating the investigation. If none of these factors are present, Simon's Rock will likely respect the reporting party's request.

Similarly, a reporting party may desire to have investigatory or disciplinary action taken, but may wish to have their identity as the reporting party kept confidential. Depending on the circumstances, this may or may not be possible. If any number of people could have reported the incident (for instance, if it occurred in the classroom), it may be possible for the reporting party's identity to remain confidential and not shared with the responding party. However, in other cases, it may not be possible to proceed with investigatory or disciplinary action without revealing the identity of the reporting party.

If Simon's Rock honors a reporting party's request for confidentiality and the reporting party decides not to participate in an investigation, and/or makes an anonymous complaint, Simon's Rock's ability to meaningfully investigate the incident or pursue action against the accused party may be limited.

If Simon's Rock determines that it cannot maintain a reporting party's confidentiality, Simon's Rock will inform the reporting party prior to an investigation and, to the extent possible, share information only with a limited number of personnel responsible for handling Simon's Rock's response. Simon's Rock will not require a reporting party to participate in any investigation or disciplinary proceeding. Simon's Rock will take ongoing steps to protect the reporting party from retaliation or harm and work with the reporting party to create a safety plan.

Because Simon's Rock is under a continuing obligation to address the issue of discrimination, harassment, and sexual or gender-based misconduct campus-wide, reports of that nature (including non-identifying reports) will also prompt Simon's Rock to consider broader remedial action—such as increased monitoring, supervision, or security at locations where the reported acts occurred; increasing education and prevention efforts, including to targeted population groups; and/or revisiting its policies and practices.

### **1. Filing a Criminal Report**

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

## **I. PRELIMINARY REVIEW AND NOTIFICATION**

All 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 Complaint describes a potential violation of the Equity and Title IX policy. Members of this panel may include but are not limited to: the Deputy Title IX Coordinator, the Director of Finance and Administration, the Vice Provost, the Dean of Students and Equitable Community, the Dean of Studies, and the Dean of Faculty and Curricular Development.

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

If the Title IX Coordinator determines that a Complaint describes a potential violation of the Title IX and 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 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 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 that if during the course of the investigation additional allegations give rise to additional 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 Complainant is submitted in relation to the same matter, Simon's Rock 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 a Complaint**

At any time, Simon's Rock may dismiss a Complaint if, among others:

- Simon's Rock is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in Simon Rock's education program or activity;

- The Complainant voluntarily withdraws any or all of the allegations in the Complaint and provides Simon's Rock with written notice of the withdrawal; or
- The allegations would not constitute Prohibited Conduct even if proved.

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 a Complaint, in instances where a Complaint is dismissed in response to a request to withdraw the Complaint by the Complainant, the Complaint may not be reinstated at a later date if the matter has already proceeded to investigation at the time that the request to withdraw the Complaint was submitted.

## **J. 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 the hearing. If requested, the Title IX Coordinator will work with the Complainant 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 their party or speak on their behalf during any meeting with the investigator, the Title IX Coordinator, or during the hearing. Simon's Rock will not intentionally schedule meetings or hearings on dates where the Advisors for all parties are not available. However, Simon's Rock expects that 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.

## **K. 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 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 the Title IX Coordinator, the Director of Wellness, the Dean of Students and Equitable Community, 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.

When an emergency removal is performed in response to a report of sexual misconduct, the Complainant will be informed of the emergency removal of the Respondent.

### **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 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.

### **3. Administrative Leave**

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

## **L. INVESTIGATION**

When a Complaint is accepted Simon's Rock will open an 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; 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. The Investigator will also provide the parties and witnesses with an opportunity to review and verify the Investigator's summary notes from interviews and meetings with that specific party or witness. Each party will be allowed the opportunity to suggest questions they wish the Investigator(s) to ask of the other party and witnesses. Conversations with the investigator are not confidential and information disclosed to the investigator may be incorporated into the investigative report regardless of whether or not the witness or party participates in the review process. While the decision to participate in any interview with the investigator is voluntary, requests to withdraw testimony once provided to the investigator will not be granted.

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, 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 of Meetings**

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 Complaint. It will include any:

- Evidence that is relevant;
- 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 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 adjudication, the Title IX Coordinator will provide to both Complainant 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.

## **M. ADJUDICATION: HEARING**

Adjudication of Complaints will proceed under a 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 tasked of any party, witness, or Investigator to a Decision-Maker. The 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 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.

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

The Title IX Coordinator or their designee will designate a Decision-Maker. The 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 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 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 adjudication under the Title IX Policy and 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 Grievance Process;
- The time, date, and location of any meeting conducted as part 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 any meeting conducted as part of the hearing, including the names of the 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.

### **5. 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.

## **6. Advisor for the Purposes of the Hearing**

Parties may opt to have the same Advisor during investigatory meetings and during the hearing or may opt for a different Advisor during the hearing. 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. Should a party wish for Simon's Rock to provide 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 being a witness in the matter. The Advisor may not advocate or speak on behalf of a party at any time during the hearing.

## **7. Failure to Appear**

The parties cannot waive the right to a 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 Decision-Maker will not draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer questions.

## **8. 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.

## **9. Recording**

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

## **10. Participant Conduct**

Participants in the live hearing, including Advisors, must conduct themselves appropriately and respectfully towards all other participants. Participants and Advisors may not act in a way that may be considered by a reasonable person to be abusive, intimidating, harassing, or disrespectful.

Notably, Parties and Advisors must: (1) 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; (2) not act abusively or disrespectfully during the hearing toward any other party or to witnesses, advisors, or Decision-Makers; and (3) 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.

Advisors, witnesses, and parties may be removed if their conduct violates, in the Decision-Maker's discretion, the expectations set forth herein. The Decision-Maker, in their sole and absolute discretion, may adjourn the hearing and exclude the offending person. Repeat offenders of such conduct may face additional sanctions under other campus policies.

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 or the Title IX Coordinator for cases involving students. 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.

## **N. 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;
- Information about the policies and procedures used to evaluate the allegations;
- An evaluation of the relevant evidence;
- Conclusions regarding the application of Simon's Rock's applicable policies to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions Simon's Rock imposes on the Respondent and whether remedies designed to restore or preserve equal access to the education program or activity will be provided to the Complainant; and
- Procedures and permissible bases for the Complainant and Respondent to 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.

## O. SANCTIONS

*The following sanctions may be imposed following 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 and Equitable Community 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.

**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.

**Employee Matters:** The following sanctions may be imposed following 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.

## **P. 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 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; or
- The Title IX Coordinator, Investigator(s), or 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 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.

## **Q. EXCLUSIONS AND OTHER PROVISIONS**

1. 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.



2. False Allegations and Evidence: Deliberately false and/or malicious accusations under this policy will be subject to appropriate disciplinary action.
3. 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.
4. Reasonably Prompt Timeframes: Simon's Rock will attempt to resolve a Grievance process within one hundred and twenty (120) 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 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.
5. 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 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.

6. Consolidation of Investigations: The Title IX Coordinator reserves the right to consolidate 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 Complaint with investigations under the student code of conduct where the allegations arise out of the same facts or circumstances. 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 Title IX policy, the investigation may be consolidated and conducted according to the procedures set forth herein.

7. Effect of Legal Proceedings: Because the standards for finding a violation of criminal law differ from the standards for finding a violation of this policy, criminal investigations are not determinative of whether misconduct, for purposes of this policy, has occurred. Conduct may constitute misconduct under this policy even if law enforcement agencies lack sufficient evidence of a crime or decline to prosecute. The filing of a complaint of misconduct under this policy 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.
8. 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.
9. 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 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;

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

10. 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.

11. 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 the institution 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.
12. 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.
13. Academic Freedom: This policy is 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.
14. Revision of this Policy and Procedures: This policy and procedures may be amended at any time. Any amendments will be published widely to the Simon's Rock community.
15. Transcript Notations for Suspension, Expulsion, and Withdrawal: For crimes of violence (as defined below), Simon's Rock will make a notation on the transcript of students found responsible after a Title IX and Equity process that they were "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed. "Crimes of Violence" shall include the conduct violations which correlate with: Criminal Homicide, Rape, Fondling, Incest, Statutory Rape, Robbery, Aggravated Assault, Burglary, Motor Vehicle Theft, and Arson.

## **APPENDIX B.1: 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 Policy 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 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

The party or Advisors agree 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. 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.