

Title IX at Simmons University

Presented by:

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CONTENT WARNING

Please use self care.

Feel free to move around as needed.

Sexual Harassment Policy and Grievance Process



Definitions

Sexual Harassment

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

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

Also includes an incident of sexual violence that does not qualify as Sexual Assault (as defined by the Policy), gender-based violence, and/or violence based on sexual orientation or gender identity or expression. These forms of Sexual Harassment need not be on the basis of sex.

Educational Program/Activity

At Simmons, this includes all education and employment activities, locations, events, or circumstances over which Simmons exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs.

This also includes any building owned or controlled by a student organization that is officially recognized by the University.

Consent

Agreement which is **freely and actively given** through clear words or actions, and creates **mutually understandable permission** regarding the conditions of sexual activity.

Achieved only where each participant mutually understands what behavior the participant's partner consent to, and what behavior the participant's partner does not consent to, with regard to physical and sexual interactions.

Consent given at one time does not imply Consent for further sexual activity at another time.

Incapacitation

The inability to make informed, rational decisions due to the use of drugs or alcohol, due to being asleep or unconscious, due to injury that disables the ability to communicate, or due to an intellectual or other disability that prevents the individual from having the capacity to give Consent.

Someone who is incapacitated
cannot provide Consent to sexual activity.

Incapacitation- Drugs/Alcohol

Incapacitation is a state beyond a heightened state of drunkenness or intoxication.

Individuals who were in a “blackout” state will not be deemed to have given consent, even if they appeared to give consent.

The use of alcohol or drugs is never an excuse for failing to obtain Consent.

Serving Impartially

Serving Impartially

The Title IX Coordinator must serve impartially. This includes:

- Avoiding prejudgment of the facts at issue,
- Avoiding conflicts of interest, and
- Avoiding bias (for or against complainants or respondents generally or an individual complainant or respondent).

Informal Resolution Processes

Processes

Facilitated Resolution

Facilitator attempts to resolve the matter with the parties.

No determination of responsibility.

Administrative Resolution

Title IX Coordinator conducts an investigation and issues a determination on responsibility.

There is no hearing.

Investigation

Investigation

Investigator interviews witnesses and gathers documentation evidence.

Must:

- Gather evidence directly related to the allegations whether or not the Investigator intends to rely on such evidence.
- Gather and evaluate all Relevant evidence, both inculpatory and exculpatory, in an impartial and objective manner.

Relevance

Relevant evidence is that having the tendency to make the existence of any fact that is of consequence to the determination of the allegation(s) of Sexual Harassment more probable or less probable than it would be without the evidence

Relevant Evidence Does Not Include

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

Investigative Report

Investigative Report

Contains a summary of all Relevant evidence.

Parties receive a copy for review.

Parties are welcome, but not required, to submit a response.

Hearing Process

Hearing Basics

- Hearings are live.
- Hearings are also recorded.
- Take place virtually, via technology (such as Zoom)
- Hearing Officer and parties can simultaneously see and hear the party or the witness answering questions

Pre-Hearing Process

Hearing Officer may:

- Hold a pre-hearing conference.
- Allow the Parties to submit their Cross-examination Questions for review and preliminary determination on Relevance.
- Allow the Parties to submit to the Hearing Officer their objections to any document evidence for a preliminary determination on Relevance.

Hearing Participants

Welcome to Attend

- Title IX Coordinator
- Parties
- Parties' Advisors
- Witnesses invited by the Hearing Officer
- Other individuals approved by the Title IX Coordinator

Must Attend

- Hearing Officer

Hearing Procedures

Hearing Officer opens the hearing.

The parties and the witnesses have an opportunity to answer questions from the Hearing Officer and on Cross-Examination.

Only Relevant evidence will be considered. A Party or witness may introduce evidence not previously provided to the Investigator only if the evidence was not reasonably available to the Party or witness prior to the date of the hearing.

Advisors and Cross-Examination

The parties may have an advisor of their choice at hearing. An advisor will be provided for any party who requests one or who appears without an advisor.

Only the advisors may ask Cross-Examination Questions.

The Hearing Officer shall not draw any inferences from a Party's or witness's absence from the live hearing or refusal to answer Cross-examination Questions or other questions.

Evidence and Credibility

Hearing Officer objectively evaluates all Relevant evidence.

Hearing Officer may assess the credibility of the Parties and witnesses, including, but not limited to, on the basis of body language, demeanor, specific details, consistency, and corroborative evidence.

The Hearing Officer's credibility determinations shall not be based on a person's status as a Complainant, Respondent, or witness or on any other protected status or characteristic.

Determination on Responsibility

Determination

Determination is:

- In writing
- Issued within seven (7) business days after the final determination of the Formal Complaint

Information Included

- Recites the allegations
- Describes the procedural steps taken
- Lists the findings of fact by a preponderance of the evidence which support the determination
- Conclusions regarding the application of the Policy and any other relevant Simmons policy
- Determination regarding responsibility
- Disciplinary sanctions imposed, as applicable
- Remedies provided the Complainant, as applicable
- Information on how to appeal

Determination and Sanctions

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

Violation or failure to fulfill any assigned sanction may result in additional sanctions, up to and including expulsion or termination.

Sexual Harassment Prevention and Awareness Efforts

- Sexual Harassment prevention and awareness module provided to all first year students.
- Programming that takes place throughout the year through Betsy's Friends and other campus partners, such as Athletics & Recreation or the Title IX Office.
- Partnering with community agencies, such as Respond, Inc. and the Boston Area Rape Crisis Center.

Questions?