

Title IX at Simmons University

Presented by:

Sara Simberg, Assistant General Counsel & Title IX Coordinator

October 28, 2022



CONTENT WARNING

Please use self care.

Feel free to move around as needed.

AGENDA

1. Overview of Federal and State Laws Relating to Sexual Harassment
2. Understanding Conflicts of Interest and Bias
3. Simmons' Sexual Harassment Policy & Grievance Process

Title IX

MA Campus Sexual Violence Act



Federal and State Law

Title IX of the Education Amendments Act of 1972

- Prohibits discrimination on the basis of sex in any education program receiving federal funding.
- Sex includes: sex assigned at birth, sexual orientation, gender identity and expression, and pregnancy and related conditions

Massachusetts Campus Sexual Violence Act

- MA's version of Title IX.
- Additional focus on preventing, reporting and responding to sexual assaults and other forms of sexual violence.

Institutional Obligations

Two primary obligations:

- Adopt and publish grievance procedures that provide for the impartial, prompt, and equitable resolution of student and employee complaints of sexual harassment.
- Upon gaining actual knowledge of Title IX sexual harassment occurring within Simmons' education program or activity against a person in the United States, Simmons must promptly respond promptly in a manner that is not deliberately indifferent and complies with Title IX and its regulations.

Conflicts of Interest & Bias





Take these common household items and put them into one of two categories. You choose the categories and which items go where.

Exploring Bias

1. Which two categories did you choose?
2. Would you have categorized the items differently if you could choose more than two categories?
3. Were you influenced by me calling them common household items?

Requirement under Title IX

No conflict of interest or bias for or against:

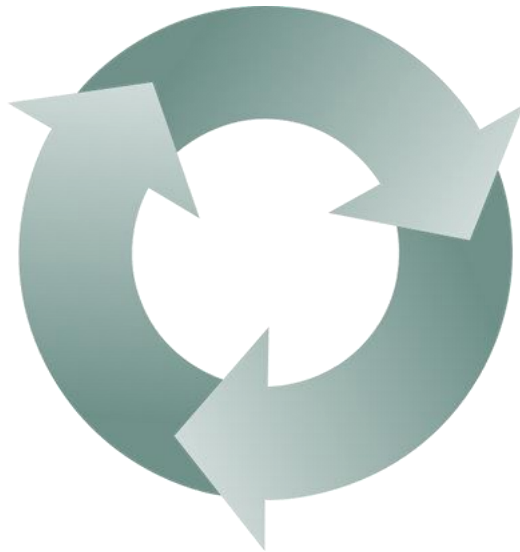
- Complainants or respondents generally, or
- An individual complainant or respondent.

Examples of Conflicts of Interest

- One of the parties is an employee in your department.
- You have a personal relationship with one of the party's families.
- You previously wrote a letter of recommendation or served as a professional reference for one of the parties.

Understanding Bias

Bias is a human trait resulting from our tendency and need to classify individuals into categories as we strive to quickly process information and make sense of the world.



Explicit and Implicit Bias

Explicit Bias

With explicit bias, individuals are aware of their prejudices and attitudes toward certain groups.

Implicit Bias

Implicit bias involves all of the subconscious feelings, perceptions, attitudes, and stereotypes that have developed as a result of prior influences and imprint.

- **Example:** You treated all items as either cooking and cleaning because I told you that you could only pick two categories (Availability bias)
- **Example:** You picked cooking and cleaning because I called these items as “common household items” (Stereotyping)
- **Example:** You picked these categories because I told you that everyone had to agree, so you went along with the group). (Group think)

Eliminating Implicit Bias

Recognize and be aware of your own biases.

When making assumptions, explore the “why” behind your ideas. “Why am I assuming that?”

Actively work toward eliminating bias and ensure it does not impact your work by instead using factual information to support your decisions.

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.

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

When There is a Report

Employee Obligations to Report

Responsible Employees

All employees, other than a small group, are Responsible Employees.

Have a duty to report all information received relating to Sexual Harassment.

Confidential Resource Persons

Has a duty to keep confidential information received relating to Sexual Harassment.

Other confidential resources:

- Health Center staff
- Counseling Center staff

Small Group Exercise:

Think of three different types of instances where information may be shared with a Responsible Employee that would require that employee to report the information to the Title IX Coordinator.

What are some considerations that apply in each of those set of circumstances?

When a Report is Received

The Title IX Coordinator:

- Conducts an immediate assessment as to whether there is a threat to the **physical health or safety** of any students or other individuals arising from the allegations of Sexual Harassment that warrants an emergency removal of the Respondent.
- Contact the Complainants to gather and provide key information.

Information Gathered/Provided

- Discuss the nature and circumstances of the reported conduct
- Review relevant documentation
- Address the importance of preserving evidence
- Determine the Complainant's immediate physical safety and emotional needs
- Discuss the availability of Supportive Measures
- Explain about the University's Sexual Harassment Policy
- Describe the process for filing a Formal Complaint
- Explain the Complainant's right to report the matter to Public Safety and to utilize an outside court process
- Describe available resources for seeking medical treatment, counseling, or other support services.
- Provide a written explanation of the Complainant's rights and options

The Filing of a Formal Complaint

Formal Complaint

If a Complainant wants the University to investigate a report of Sexual Harassment, the Complainant must file a Formal Complaint.

The filing of a Formal Complaint triggers the Grievance Process.

The Title IX Coordinator:

- Provides notice to the parties of the Formal Complaint.
- Determines if the Formal Complaint must or may be dismissed.

Hypothetical

Rio is a student at Simmons and is doing their clinical work at HealthCare Facility, along with other students from Simmons, including Chaz. Everyone gets along well and they often go out for drinks after they are done with their work for the day.

One evening, Rio and Chaz both have a lot to drink. They leave the bar at the same time and share an Uber. While in the car, Chaz grabs Rio and kisses Rio, despite Rio repeatedly attempting to push Chaz away. When the driver finally stops, Rio jumps out. When Rio looks back, Rio sees that Chaz has exited the car and has vomited on the sidewalk.

When Rio sees Chaz during their shift the next day, Chaz apologizes for being “so drunk” the night before and says to Rio, “I don’t remember a thing that happened after leaving the bar.” Rio feels very uncomfortable around Chaz.

Rio has asked you for support and asked you not tell anyone.

Dismissal of the Formal Complaint

Must be dismissed:

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

May be dismissed:

- Complainant requests to withdraw their Formal Complaint.
- Respondent is no longer enrolled in or employed by Simmons.
- Circumstances prevent the gathering of sufficient evidence.

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.

“Relevant”

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

Information that is Not Relevant

- Questions or evidence relating to Complainant's sexual predisposition.
- Questions or evidence relating to Complainant's prior sexual behavior (with exceptions).
- Information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- A Party's records held by a medical professional, unless the Party consents to the release.
- Duplicative Cross-Examination questions.

Conducting Interviews

The parties are entitled to:

- Written notice of all meetings they are involved in
- Have an advisor of their choice present for all meetings, hearings, etc.

Invite the interviewee to provide information relating to the allegations.

Ask who, what, where, when, and why questions.

Keep the elements of the alleged charge in mind when asking questions.

Ask clarification questions.

Effects of Trauma

When an individual witnesses or is involved in an event that is life-threatening or perceived to be so, psychological trauma can result.

Every person will react differently to trauma. Some people may develop stress-induced conditions, while others may see an increase in resiliency. Many factors affect how a person will be affected, such as the type of precipitating event and the survivor's previous experiences.

How the impact appears to a third party can range from subtle to obvious. Some individuals may show no outward signs of impact, while others may develop symptoms, such as neurological effects, gastrointestinal issues, and sleep disturbances.

Cultural Background

An individual's cultural background may impact on how that person perceives an experience of sexual harassment and the extent to which they are willing to seek support.

This means sexual misconduct may impact individuals differently based upon factors such as the individual's national origin, sex, ethnicity, religion, gender identity, gender expression and sexual orientation.

At Simmons, we honor the humanity, dignity, and individuality of each member of our Simmons community. Every individual involved in facilitating the Grievance Process will respect the cultural background of each person involved in the process.

Impact of Sexual Harassment on Individuals with Disabilities

The research indicates that individuals with disabilities experience sexual harassment at higher rates.

Abuse may be directly related to an individual's support needs. For instance, the aggressor may remove the person's access to their assistive technology.

Simmons provides disability-related accommodations as needed for any individual involved in any part of the Title IX process.

Review of the Evidence

Parties' Review of the Evidence

Investigator sends the parties copies of all evidence obtained as part of the investigation that is directly related to the allegations.

Evidence that is not “directly related” includes:

- Information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege; and
- A Party's records that are made or maintained by a medical provider, unless the party has consented to its release.

Parties may submit a written response.

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.

Appeal

Appeal

Complainant and Respondent are entitled to appeal:

- (a) dismissal by the Title IX Coordinator of a Formal Complaint,
- (b) a determination regarding responsibility by the Title IX Coordinator (or designee) issued through the Administrative Resolution process, and/or
- (c) a determination regarding responsibility.

No Party may appeal the severity or proportionality of sanctions imposed in conjunction with a determination of responsibility.

Grounds for Appeal

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

Review and Decision

The burden of proof rests with the Appellant (the person who submitted the appeal); the appeal is not a fresh or “de novo” review of the entire matter.

Appeals Officer will issue a written decision simultaneously to Parties, which will either:

- affirm or modify the original determination regarding responsibility or dismissal of all or part of the Formal Complaint, and/or
- remand the matter to the Hearing Officer for additional action on one or more issues as specified by the Appeals Officer.

Timing

Resolution through the determination regarding responsibility, but exclusive of any appeal of the determination regarding responsibility, will generally take place within **ninety (90) calendar days** of the date the Title IX Coordinator received the Formal Complaint.

Additional Considerations

Additional Considerations

- Retaliation is strictly prohibited.
- Other than as needed to conduct the Grievance Process, as required by law, or to implement sanctions/remedies, the University shall keep confidential the identity of any individual who has made a report of Sexual Harassment and those individuals who participate in the Grievance Process following the filing of a Formal Complaint.

Preventing Sexual Harassment

- Encourage Simmons community members to ask questions and seek help.
- Strictly enforce the non-retaliation policy.
- Be an upstander.
- Meet our obligations as a responsible employee.

Questions?