

Simpson College Title IX Formal Resolution: 3. Hearing and Adjudication

A hearing is an opportunity for the parties to address the Sexual Misconduct Review Board in person and to question the other party and/or witnesses. It also provides the Review Board the opportunity to obtain information following the investigation that is necessary to make a determination of whether a policy violation occurred.

Once the investigation summary report has been drafted, the College will appoint a Review Board to determine whether the Respondent is responsible for sexual misconduct alleged in the Formal Complaint. If the responding party is found responsible for the conduct alleged in the Formal Complaint, the Review Board, in consultation with the Title IX Coordinator (and, in the case of faculty/staff respondents, with the Academic Dean and/or Director of Human Resources), will determine the consequences and/or sanctions to be imposed. The Review Board will be individual(s) other than the Title IX Coordinator and investigator.

Scheduling

A live hearing on the Formal Complaint will be scheduled at least 10 calendar days after the parties' receipt of the Investigation Report and, except in extraordinary circumstances, no later than 17 days from the issuance of the Investigation Report.

Composition of the Sexual Misconduct Review Board

The Sexual Misconduct Review Board is composed of members of the Simpson College faculty, staff, and administration. Board members are appointed by the Title IX Coordinator, in consultation with processes for selection of faculty members. Hearings will be chaired by an external Review Board member who is retained by the College. When selected, all members of the Board receive comprehensive training about the hearing process and sexual misconduct. The Title IX Coordinator will serve as an ex-officio consultant to the Sexual

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Misconduct Review Board without vote and provide administrative support and clarifications as needed.

The Respondent and Complainant will be notified of the names of those who will serve on the Board at the time the hearing is scheduled. If either objects to any member or members of the Board, they must commit the reasons for the objection to writing within two business days thereafter. The Title IX Coordinator will review the objection and decide whether the Review Board member(s) should or should not be replaced. Removal from the Review Board will occur only if the Title IX Coordinator is convinced that extenuating circumstances exist that would preclude the Review Board member from their ability to impartially adjudicate the incident. Any Board member who personally knows either the Respondent or the Complainant and believes this may impact their impartiality may be excused from the case.

Hearing Board Review of Materials

Prior to the hearing, the Review Board will receive and review the investigation summary report, which will contain all evidence deemed relevant by the investigator(s). These materials may include any statements, interview, and material evidence submitted during the investigation process. The statements from witnesses obtained during an investigation may be submitted in lieu of actual witness testimony in the absence of an objection by either party. Prior to the hearing, the Review Board may request more information from any parties, including the Complainant, the Respondent, or identified witnesses involved in the case. The parties will be notified of any additional interviews. After reviewing the materials, the hearing board will identify which witnesses, which may include all witnesses, they want available at the hearing for potential questioning by parties' advisors. The hearing board may request the presence of any witness however, the hearing board may consider prior statements of witnesses who do not appear at the hearing for decision-making purposes.

Pre-hearing Meeting

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Prior to the hearing, the Title IX Coordinator will schedule a separate pre-hearing meeting with each party and their advisors to review procedures to be followed at the hearing; to identify the names of witnesses that the hearing board asked to be available; to identify other witnesses the party wants to appear; and to answer any other questions or share information prior to the hearing. The Title IX Coordinator will also discuss time allotted for the hearing and any time limitations. The parties are expected to identify witnesses they wish to be available during the hearing by the pre-hearing meeting. The Review Board may, at its discretion, exclude from the hearing witnesses who were not identified by a party.

The Hearing Process

The hearing is not intended to be a repeat of the investigation or an exhaustive review of the evidence summarized in the investigation report. The hearing will be conducted live and will be convened in a private room or its virtual equivalent where there will be no disturbances from other members of the campus community. There will be separate waiting rooms for the witnesses of the Respondent and for the witnesses of the Complainant. The hearing will not be open to the public.

The Complainant and the Respondent will not be required to be present in the hearing room at the same time nor face one another during the hearing process, however, arrangements will be made for both the Complainant and the Respondent to have the opportunity to observe the entire hearing. Each may present evidence on their own behalf through their own testimony, exhibits, the presentation of witnesses and/or (absent objection) statements of witnesses. Each may choose an advisor (which may be, but is not required to be, legal counsel) to accompany them during the hearing.

Case Presentation

The Review Board has absolute discretion to decide upon the format for the hearing and to determine which witnesses are relevant to their outcome determination. The Hearing Board may decline to hear from a witness where they

have concluded that the information is not relevant for their outcome determination or unduly duplicative of other testimony already provided at the hearing.

A typical hearing may include:

- Brief opening remarks by the Review Board Chair;
- Questions posed by the Review Board to one or both parties
- Follow-up questions by one party to the other (typically with the Respondent's advisor questioning the Complainant first)
- Questions by the Review Board to any witnesses; and
- Follow-up questions by the parties (through their advisors) to any witnesses.

The Review Board may also afford the opportunity to both parties to present brief closing remarks.

The Review Board members are allowed to ask questions at any point throughout the hearing. Furthermore, the Review Board may recall the Complainant, Respondent, and/or any witness at any point to clarify a point or inquire further about relevant information.

There are some situations in which the Complainant or Respondent cannot or will not present their own case. In these situations, the Title IX Coordinator may appoint an administrator to present the case to the Review Board in the party's stead. When this occurs, the party will be permitted to have input on the selection of that administrator but the Title IX Coordinator retains ultimate authority to appoint the administrator. Under this circumstance, the Complainant/Respondent still may be present throughout the entire proceeding.

Questioning and Cross-Examination

Neither the Respondent nor the Complainant may directly question the other during the hearing. However, the Review Board will permit each party's advisor to ask the other party and any relevant witnesses all relevant questions and follow-

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up questions, including questions that challenge a witness's credibility. All cross-examination questions will be conducted directly, orally, and in real time by the party's advisor—never by a party personally.

Only relevant cross-examination and other questions may be asked of a party or witness. For that reason, questions to the other party must be directed to the Review Board chair who will review the questions and determine if they will be posed to the other party and, if so, the chair will ask the party the question. Prior sexual behavior/sexual history/sexual predisposition of a party is not relevant and will not be allowed to be presented during the hearing except: (1) evidence of the prior relationship between the Complainant and the Respondent to determine whether there was consent; and (2) to prove that someone other than the Respondent committed the alleged conduct. However, the existence of a current or past sexual relationship or encounter does not, in and of itself, establish consent for any given sexual encounter. Evidence of a respondent's prior conduct violations may be relevant and admissible to determine a sanction, if the Respondent is found responsible.

Standard of Evidence

To find the Respondent responsible for a violation of this policy, a majority of the Review Board must decide that a preponderance of the evidence establishes the Respondent's behavior constituted a violation of the conduct alleged in the Formal Complaint. Preponderance of the evidence means that it is more likely than not that the Respondent violated the policy. In the absence of a finding of a policy violation based upon a preponderance of the evidence, neither the Complainant nor the Respondent will be subject to disciplinary action.

Impact of Non-Participation

The Respondent will be deemed responsible only where the Review Board determines that a preponderance of the evidence supports a determination of responsibility. Neither party is required to participate in the investigation or any

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form of resolution under this Grievance Procedure. The Review Board will not draw any adverse inference from a decision by either party not to participate.

The Review Board cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing, or refusal to answer cross-examination or other questions.

Hearing Record

A record of the hearing (audio tape recording and/or written) will be maintained and made available for electronic review to the Respondent and Complainant if requested, subject to restrictions/conditions established by the College.

Decision Making

Once the hearing is concluded, the Review Board members will, after meeting in closed session, render a decision within 10 business days as to whether the Respondent's actions constitute a violation of this policy. However, if they cannot reach a decision in that time the parties will be so notified and a timeframe will be provided for when the decision will be rendered. If necessary, prior to the decision being rendered, any party, including witnesses, may be recalled for further questioning by the Review Board.

Written Determination of Responsibility

Once a decision is made, the Title IX Coordinator will issue to both parties simultaneously a written Determination of Responsibility. The Review Board's written determination of responsibility will include:

- The description of the alleged sexual misconduct
- A description of the procedural steps taken from the College's receipt of the Formal Complaint through the determination, including notifications to the parties, interviews with parties and witnesses, site visits (if any), methods used to gather evidence, and hearings held
- Findings of fact supporting the Review Board's determination

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- Conclusions on the application of this policy to the facts
- A statement of, and rationale for, the result as to each allegation, including a determination of responsibility
- A statement of disciplinary sanctions that Simpson College is imposing on the Respondent, if any
- Information about whether remedies designed to restore or preserve equal access to Simpson College's education program or activities will be provided by Simpson College to the Complainant
- The procedure for appeal and permissible basis for appeal of the Review Board's determination.

The Determination of Responsibility becomes final either on the date that the College provides both parties with written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

Sanctions and Remedies

Sanctions and remedies will be based on the nature of the incident and seriousness of the behavior, any prior conduct violations disclosed to the review board, whether there is a pattern of sexual misconduct, safety concerns for the parties and the Simpson College community, and other relevant facts.

Sanctions may include, but are not limited to, one or more of the following:

- Oral or written reprimand
- Additional education or counseling
- Community service on or off campus
- Restriction of campus privileges
- Not being allowed to represent the College in leadership, volunteer, or paid positions
- No contact orders

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- Removal from college housing without a refund. Students who are dismissed during the term are subject to Simpson's official Refund and Withdrawal Policy as outlined in the college catalog.
- Disciplinary warning
 - A disciplinary notice consists of written notice that continuation of misconduct in general or repetition of specified conduct has been found unacceptable within the specified period of time stated in the warning. Failure to comply may be cause for further disciplinary action.
- Disciplinary probation for students and employees
 - Disciplinary probation is the most severe and serious warning an individual may receive and still remain enrolled in and/or employed by the College. During the period of probation, disciplinary probation may be accompanied by other conditions as determined by the College. Violation of the terms of disciplinary probation or the infraction of any college regulation during the probation period may be grounds for suspension, expulsion, or termination of employment.
- Suspension
 - Suspension is the separation from the College for a specified period of time. Readmission must be applied for and may be contingent upon compliance with specific conditions.
- Expulsion
 - Expulsion is the permanent termination of enrollment from the College
- Termination of employment with the College
- Any other available sanctions specified in the Student Handbook, Staff Handbook, or Faculty Handbook

The Review Board reserves the right to broaden, lessen, or alter the range of recommended sanctions in the case of serious mitigating circumstances, egregiously or offensive behavior, or other compelling justifications.

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In addition, depending on the decision of the Sexual Misconduct Review Board, the Title IX Coordinator may provide remedies/accommodations to the Complainant such as counseling, alternative living/working arrangements, and academic accommodations. The Title IX Coordinator may also take certain measures for the benefit of the school community.

Both Title IX and FERPA permit a school to disclose to the Complainant information about the sanction imposed upon a student who was found to have engaged in harassment when the sanction directly relates to the harassed student.